

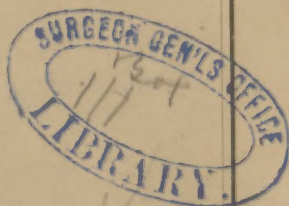
*De Caindry (Wm A.)*

THE ESTABLISHMENT  
OF THE  
**WAR DEPARTMENT,**

AS ONE OF THE  
CIVIL EXECUTIVE DEPARTMENTS OF THE U. S. GOVERNMENT;

WITH A GENERAL VIEW OF ITS  
INTERIOR ORGANIZATION AND ADMINISTRATION.

BY  
WILLIAM A. DE CAINDRY,  
WASHINGTON, D. C.



WASHINGTON CITY :

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#### NOTE.

The following paper forms a portion of the Report on the Participation of the War Department in the International Exhibition of 1876, and was submitted to Congress as a part of the general "Report of the Board on behalf of the United States Executive Departments" at that Exhibition.

For purposes of reference, it is now printed in advance of the publication of the Report of the Board by Congress.

WASHINGTON, D. C., *February 5, 1878.*



# THE ADMINISTRATION OF THE WAR OFFICE

## DURING THE REVOLUTION.

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On June 12, 1776, the report of a committee which had been appointed in the Continental Congress to consider the expediency of establishing a War Office, was taken up in that body for consideration, when the following resolution was passed:<sup>1</sup>

*Resolved*, That a "Committee of Congress" be appointed by the name of the "Board of War and Ordnance," to consist of five members.

That a Secretary and one or more clerks be appointed by Congress, with competent salaries, to assist the said Board in executing the business of their Department.

That it be the duty of the said Board to obtain and keep an alphabetical and accurate register of the names of all officers of the land forces in the service of the United Colonies, with their rank and the dates of their respective commissions; and also regular accounts of the state and disposition of the troops in the respective colonies; for which purpose the generals and officers commanding in the different departments and posts are to cause regular returns to be made in the said War Office.

That they shall obtain and keep exact accounts of all the artillery, arms, ammunition, and warlike stores belonging to the United Colonies, and of the manner in which, and the places where, the same shall, from time to time, be lodged and employed; and that they shall have the immediate care of all such artillery, arms, ammunition, and warlike stores, as shall not be employed in actual service; for preserving whereof they shall have power to hire proper magazines at the public expense.

That they shall have the care of forwarding all dispatches from Congress to the colonies and armies, and all moneys to be transmitted for the public service by order of Congress; and of providing suitable escorts and guards for the safe conveyance of such dispatches and moneys, when it shall appear to them to be necessary.

That they shall superintend the raising, fitting out, and dispatching all such land forces as may be ordered for the service of the United Colonies.

That they shall have the care and direction of all prisoners of war, agreeable to the orders and regulations of Congress.

That they shall keep and preserve, in the said office, in regular order all original letters and papers which shall come into the said office by order of Congress, or otherwise, and shall also cause all draughts of letters and dispatches to be made or transcribed in books to be set apart for that purpose, and shall cause fair entries in like manner to be made, and registers preserved of all other business which shall be transacted in the said office.

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<sup>1</sup> Journals of Congress, (Way & Gideon's ed., 1823,) vol. 1, p. 370.

That before the secretary, or any clerk, of the War Office, shall enter on his office, they shall respectively take and subscribe the following oath, a certificate whereof shall be filed in the said office: "I, A. B., do solemnly swear that I will not directly or indirectly divulge any matter or thing which shall come to my knowledge as Secretary of the Board of War and Ordnance, (or clerk of the Board of War and Ordnance,) established by Congress, without the leave of the said Board of War and Ordnance; and that I will faithfully execute my said office according to the best of my skill and judgment. So help me God."

That the said Board of War be authorized to hire suitable apartments, and provide books, papers, and other necessities at the Continental expense, for carrying on the business of the said office.

On the following day five members of the Congress were chosen to constitute the Board, and Richard Peters, Esq., was elected Secretary of the Board.<sup>1</sup> A salary of \$800 a year was attached to this latter office.<sup>2</sup> On July 8 the Congress directed the commanding officer of the local military at Philadelphia "not to order Captain Peters out of the city, as his service and attendance is necessary in the War Office."<sup>3</sup> This office, at that date, was located on Market street, near Fourth, in the city of Philadelphia.<sup>4</sup> On 18th of July a sixth member was added to the Board.<sup>5</sup>

Congress had already provided for the supreme military command of the Continental army, by the appointment of George Washington as "General and Commander-in-Chief," with full power and authority to act as he should think fit for the good and welfare of the service, subject to the rules and discipline of war as transmitted to him, and to such orders and directions as he should receive from Congress or a committee thereof,<sup>6</sup> and the Congress had pledged their lives and fortunes to maintain and assist him and adhere to him as such. They had also provided for an Adjutant-General, a Quartermaster-General, a Commissary-General, a Paymaster-General, a Mustermaster-General, and other necessary staff officers for the general administration of military matters in the main army, and had required of them to render stated reports and returns to Congress.<sup>7</sup> In addition, they had provided deputies in these various branches for each separate army, and enjoined on them also the duty of making reports and returns of their actions to Congress.<sup>8</sup> Moneys for the payment of the troops and for defraying the local expenses of active operations were voted in bulk for the Paymaster-General;<sup>9</sup> and he, with the Deputy Paymaster-General, was required to "make

<sup>1</sup> Jour. Cong., vol. 1, p. 372.    <sup>2</sup> Ibid., p. 372.    <sup>3</sup> Ibid., p. 401.

<sup>4</sup> Am. Archives, 5th series, vol. I. p. 34.

<sup>5</sup> Jour. Cong., vol. 1, p. 416.    <sup>6</sup> Ibid., p. 85.    <sup>7</sup> Ibid., pp. 84, 365, 431.

<sup>8</sup> Ibid., pp. 365, 431.    <sup>9</sup> Ibid., pp. 134, 147, 175.



monthly returns to Congress of their expenditures, and the state of the military chests in their several departments.”<sup>1</sup> The Commissary-General, Quartermaster-General, Deputy Commissary, and Deputy Quartermasters-General, were required to make returns monthly, at least, of the stores under their direction and of the distribution of them.<sup>2</sup>

Concerning the institution of the War Office, the President of Congress wrote General Washington,<sup>3</sup> on June 14, 1776, as follows:

“The establishing a War Office is a new and great event in the history of America, and will doubtless be attended with peculiar advantages, when properly conducted and inspected. I hope the committee will be ready in a few days to enter upon the execution of their duty. You will see the outlines of this office in the enclosed resolves. Some further regulations, it is more than probable, will be necessary in the course of time. The Congress have only laid a foundation at present; it still remains in a great measure to erect a system of rules and laws that will enable us to carry on military operations with more knowledge, certainty, and dispatch.”

To which General Washington replied<sup>4</sup> from New York, June 20, 1776:

“The instituting a War Office is certainly an event of great importance, and in all probability will be recorded as such in the historic page. The benefits derived from it, I flatter myself, will be considerable, though the plan upon which it is first founded may not be entirely perfect. This, like other great works, in its first edition, may not be free from error;—time will discover its defects, and experience suggest the remedy, and such further improvements as may be necessary. But it was right to give it a beginning, in my opinion.”

The Board of War and Ordnance became at once the channel for the transaction of a great mass of business in connection with military operations, and in its capacity as a committee of Congress was an advisory board to Congress, on all subjects relating to military affairs.<sup>5</sup> Mail-matter to and from the Board was carried free in the mails;<sup>6</sup> and in all examinations before it it was authorized to administer oaths.<sup>7</sup>

On June 17, 1777, a deputy secretary to the Board of War was appointed,<sup>8</sup> and on July 18, 1777, Congress resolved to give the Board a new organization by declaring “that three gentlemen, not members of Congress, shall be appointed to conduct the business of the Board of War, under the direction of the present Board.”<sup>9</sup> This intention was carried out on October 17, 1777,<sup>10</sup> by the passage of the following reso-

<sup>1</sup> Jour. Cong., vol. 1, pp. 365, 431.    <sup>2</sup> Ibid., p. 431.

<sup>3</sup> Am. Arch., 4th series, vol. VI, p. 884.    <sup>4</sup> Ibid., p. 991.

<sup>5</sup> Jour. Cong., 1776, *passim*.    <sup>6</sup> Ibid., vol. 1, p. 469.    <sup>7</sup> Ibid., p. 556.

<sup>8</sup> Jour. Cong., vol. 2, p. 169.    <sup>9</sup> Ibid., p. 200.    <sup>10</sup> Ibid., p. 295.

lution, the Congress in the meantime having been compelled to evacuate the city of Philadelphia on account of the approach of the enemy, whence they proceeded to Lancaster, and thence to York, Pennsylvania:<sup>1</sup>

*Resolved*, That a Board of War be established, to consist of three persons not members of Congress.

That there shall be a Secretary to the said Board, to be appointed by Congress.

That the Board shall recommend, for the approbation and appointment of Congress, as many clerks as shall be necessary for assisting them in the execution of the business in their Department.

That the power and duties of the said Board be as follows: To obtain and keep an alphabetical and accurate register of the names of all officers in the land forces in the service of the United States, with their ranks and the dates of their commissions; to fill up all military commissions, which shall be signed by the President of Congress and countersigned by the Secretary of the War Office, and to publish annually a register of all appointments; to obtain and keep regular and exact accounts of the numbers and disposition of the forces of the United States; to obtain and keep exact accounts of all the artillery, arms, ammunition, warlike stores, clothing, medicines, and provisions belonging to the United States, and of the manner in which and the places where the same shall, from time to time, be lodged and employed; to take the immediate care and direction of all such artillery, arms, ammunition, and warlike stores as shall not be employed in actual service; to superintend the building and management of laboratories, arsenals, foundries, magazines, barracks, and other public buildings, the necessity of which they are, from time to time, to report to Congress; to forward all dispatches from Congress to the States and armies, and all moneys ordered by Congress to be transmitted for the public service, and to provide guards for the safe conveyance of such dispatches and moneys, whenever it shall appear to the Board to be necessary; to superintend the raising, recruiting, and dispatching of the land forces in the service of the United States; to take care and direction of prisoners of war; to lay before Congress proper and seasonable estimates of such artillery, arms, ammunition, and warlike stores, clothing and medicines as shall, from time to time, be wanted for the service of the United States; to execute all such matters as they shall be directed; to give their opinion on all such subjects as shall be referred to them by Congress; and in general to superintend the several branches of the military department; and if at any time they think a measure necessary for the public service, to which their powers are incompetent, they shall communicate the same to Congress for their direction therein; to keep fair entries of all the business transacted by them.

The said Board shall sit in the place where Congress shall be held, and no member of the Board shall absent himself without leave of Congress.

All the proceedings of the Board shall be inspected by Congress, or a committee by them appointed for that purpose, once a month, or oftener, as may be thought proper and convenient; and every member of Congress may have free access to the records of the said Board, and take copies thereof, excepting copies of returns of the armies, provisions, or military stores, which shall not be delivered to any member without the order of Congress.

*Resolved*, That all military and other officers attending upon or connected with the army of the United States be, and they are hereby.

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<sup>1</sup> Jour. Cong., vol. 2, p. 270.



required and enjoined to observe the directions of the said Board, in making and transmitting proper returns and such other matters as may tend to facilitate the business of the said Board.

That it be recommended to each of the United States to give the said Board all necessary assistance in the execution of the business of their department.

*Resolved*, That the salary of each of the three gentlemen who shall conduct the business of the Board of War be \$2,000 per annum.

The new Board of War,<sup>1</sup> selected November 7, 1777, under these resolutions, consisted of General Thomas Mifflin, Colonel Timothy Pickering, and Colonel Robert H. Harrison, (the secretary to General Washington,) the latter of whom,<sup>2</sup> on November 21, declined the appointment. On November 22, Congress resolved<sup>3</sup>—

“that the former Board of War be authorized to proceed on the business of that Department till such time as a sufficient number of the Commissioners of the War Office shall attend;”

and on November 24, the Board reported<sup>4</sup>—

“that they have had a conference with General Mifflin on the late establishment made by Congress for conducting the War Department, and are unanimously of opinion that a sufficient number of commissioners have not been appointed for giving due weight to the execution of the regulations which may be recommended by the Board and adopted by Congress, and particularly for enabling one of the Board of Commissioners to visit from time to time the different armies, posts, or garrisons, in order to see that the regulations adopted by Congress are carried into execution, and to examine what are the wants of the army, and what defects or abuses prevail from time to time in the different departments.”

Congress, therefore, upon that day resolved<sup>5</sup>—

“That two additional commissioners be appointed to execute the Department of the War Office, in pursuance of the resolution of the 17th of October last, and that any three of the said commissioners have full power to transact business, anything in the former resolutions respecting the Board to the contrary notwithstanding.”

On November 27, 1777, Major-General Gates was elected President of the Board of War, and Joseph Trumbull and Richard Peters (Secretary of the old Board) were elected members.<sup>6</sup> Joseph Trumbull being, on account of ill health, unable to attend to his duty at the Board, and being desirous of resigning, his resignation was accepted April 18, 1778.<sup>7</sup> On January 6, 1778, Congress selected Brevet-Brigadier-General James Wilkinson to be Secretary of the Board of War,<sup>8</sup> and on 31st March, 1778, his resignation of this office was accepted.

Great Britain had, early in the controversy between herself

<sup>1</sup> Jour. Cong., vol. 2, p. 317.

<sup>2</sup> Ibid., p. 342.

<sup>3</sup> Ibid., p. 345.

<sup>4</sup> Ibid., p. 348.

<sup>5</sup> Ibid., p. 348.

<sup>6</sup> Ibid., p. 352.

<sup>7</sup> Ibid., p. 517.

<sup>8</sup> Ibid., p. 395.

and the colonies in America, prohibited the further importation of arms and ammunition into those colonies, and had endeavored to prevent other nations from affording a supply. As early as July 15, 1775,<sup>1</sup> the Continental Congress had passed the following resolution:

*“Resolved, That for these better furnishing the colonies with the necessary means of defending their rights, every vessel importing gunpowder, saltpetre, sulphur, (provided they bring with the sulphur four times as much saltpetre,) brass field pieces, or good muskets fitted with bayonets, within nine months from the date of this resolution, shall be permitted to load and export the produce of these colonies to the value of such powder and stores aforesaid, the non-exportation agreement notwithstanding; and it is recommended to the committees of the several provinces to inspect the military stores so imported, and to estimate a generous price for the same, according to their goodness, and permit the importer of such powder and other military stores aforesaid to export the value thereof, and no more, in produce of any kind.”*

Again, on July 18, 1775:<sup>2</sup>

*“That it be recommended to the assemblies or conventions in the respective colonies to provide, as soon as possible, sufficient stores of ammunition for their colonies; also, that they devise proper means for furnishing with arms such effective men as are poor and unable to furnish themselves.”*

And again, on November 4, 1775:<sup>3</sup>

*“Resolved, That it be recommended to the several assemblies or conventions of the colonies respectively to set and keep their gunsmiths at work, to manufacture good firelocks with bayonets; each firelock to be made with a good bridle-lock, three-quarters of an inch bore, and of good substance at the breech; the barrel to be three feet eight inches in length, the bayonet to be eighteen inches in the blade, with a steel ramrod, the upper loop thereof to be trumpet-mouthed; that the price to be given be fixed by the assembly or convention or committee of safety of each colony, and that until a sufficient quantity of good arms can be manufactured, they import as many as are wanted, by all the means in their power.*

*“Resolved, That the good arms of such soldiers as leave the service be retained for the use of the new army, on a valuation made of them.”*

On January 15, 1776, a Cannon Committee<sup>4</sup> was appointed by Congress, under the following resolution, viz.:

*Resolved, That a committee of five be appointed to make an estimate of the number of cannon that may be wanted for the defense of the United Colonies, and to devise ways and means for procuring them, and that it be an instruction to said committee to inquire what size cannon can be cast in these colonies.*

This committee was, on various subsequent occasions during the war, authorized to contract for the procurement of large quantities of iron and brass ordnance.

<sup>1</sup>Jour. Cong., vol. 1, p. 118.

<sup>2</sup>Ibid., p. 119.

<sup>3</sup>Ibid., p. 164.

<sup>4</sup>Ibid., p. 236.

A committee similar in character, for promoting the manufacture of muskets and bayonets, was also appointed,<sup>1</sup> and on June 25, 1776, was directed to consider the propriety of granting a bounty, or other means, for encouraging the making of muskets.<sup>2</sup>

The various supply departments of the Army underwent radical changes in organization during the years 1777 to 1779, through Congressional legislation, had at the instance of the Board of War, after consultations with General Washington.

Some of the more material alterations will be here referred to, the language of the various resolutions for the purpose being given entire, in most cases.

On December 13, 1777,<sup>3</sup> the Board of War, to whom was referred certain letters from General Conway, brought in a report, which was taken into consideration, whereupon it was—

*Resolved*, As the opinion of this Congress, that it is essential to the promotion of discipline in the American Army, and to the reformation of the various abuses which prevail in the different departments, that an appointment be made of Inspectors-General, agreeable to the practice of the best-disciplined European armies.

*Resolved*, That this appointment be conferred on experienced and vigilant general officers, who are acquainted with whatever relates to the general economy, manœuvres, and discipline of a well-regulated army.

*Resolved*, That the duties of these officers be as follows: to review from time to time the troops, and to see that every officer and soldier be instructed in the exercise and manœuvres which may be established by the Board of War: that the rules of discipline be strictly observed, and that the officers command their soldiers properly, and do them justice.

*Resolved*, That the Inspectors-General shall make these reviews in the beginning and at the latter end of every campaign, and at such other times as the Commander-in-Chief shall direct, or as they themselves shall severally judge proper, or shall receive orders for that purpose from the Board of War, first giving notice thereof to the Commander-in-Chief and obtaining his leave for reviewing the said troops.

*Resolved*, That it be referred to the Commissioners of the War Office [Board of War] to report such further regulations for this office as they shall deem calculated to extend its utility, and to promote the end of its institution.

On February 5, 1778,<sup>4</sup> Congress took into consideration a report of the Board of War, and thereupon—

*Resolved*, That the following plan be adopted for carrying into immediate execution the important business of the Quartermaster-General:

1st. The military line, to be styled the Quartermaster-General's, which is to include the regulating of marches, encampments, order of battle, &c., as described in the books of the profession; this officer not

<sup>1</sup>Jour. Cong., vol. 1, p. 273.

<sup>2</sup>Ibid., p. 386.

<sup>3</sup>Jour. Cong., vol. 2, p. 372.

<sup>4</sup>Ibid., p. 432.



to have the disposal of public money, except small occasional sums for defraying petty expenses in the Army.

2d. The Commissary of Forage, who is to be confined to that article in his purchases.

3d. The Commissary for Horses and Wagons.

4th. The agents for the purchase of tents, entrenching-tools, building of barracks, and for all the smaller supplies of the department.

The three last to be governed in their purchases by the estimates and orders of the Quartermaster-General or the Board of War.

*Ordered*, That the Board of War prepare suitable regulations for the Quartermaster-General's Department, agreeable to the foregoing plan.

On February 6, 1778,<sup>1</sup> Congress provided, by resolutions, for "the better regulating the Hospitals of the United States," and, on February 11,<sup>2</sup> it resumed the consideration of a report of the Board of War on the Department of the Commissary-General of Military Stores, and thereupon —

*Resolved*, That there shall be one Commissary-General of Military Stores, whose business it shall be to receive and deliver all arms, ammunition, and accoutrements of every species and denomination; to provide and contract for all such articles as may be wanted in this Department, according to the direction he shall receive from the Board of War and Ordnance; to receive and collect returns from all the different States where there are any Continental arms and stores, draw them into one general return, and, on the first day of every month, deliver one to the Board of War and Ordnance. In case of vacancy, occasioned by death, resignation, or otherwise, of any of the commissaries, commissaries' deputies, or conductors, which may happen in any department near to where the Commissary-General may be, he shall have permission to fill such vacancy *pro tempore*, until it shall be confirmed or disapproved by Congress.

All moneys to be drawn on account of military stores to be by application of the Commissary-General or his deputies to the Board of War and Ordnance; and all moneys so drawn to be accounted for by him once in every six months to the Board of Treasury, or to such auditors or commissioners as the said Board shall direct. All commissaries, deputy commissaries, or conductors who may have money advanced them by the Commissary-General for the use of their several departments, to keep regular accounts, and produce vouchers and receipts for the sums paid, and account for the same to the Commissary-General once every month, or as often as called for.

All Continental armors shall be under the direction of the Board of War and Ordnance and of the Commissary-General of Military Stores; the armorers to receive from the said commissary all arms to be repaired, make returns of the state of repairs when demanded, and deliver the arms, when repaired, into his store. The principal armorer or armorers at each and every armory to be accountable for all such arms as he or they shall receive, until they are repaired and delivered to the Commissary-General, his deputies, or assistants; and the said Commissary-General shall see that every method is taken by the armorers to hasten the repairs of the arms; the principal armorers to receive money from the Commissary-General for the contingent expenses of their departments, and the Commissary-General shall produce their accounts and vouchers at the adjustment of his accounts.

That there be as many deputies, assistants, commissaries, deputy

<sup>1</sup> Jour. Cong., vol. 2, p. 433.    <sup>2</sup> Ibid., 439.

commissaries, conductors, and clerks as the exigency of the service shall require, to be appointed by the Board of War and Ordnance; and the said Board are from time to time to report all such appointments to Congress.

\* \* \* \* \*

That for the future no rank be annexed to the officers in this Department, except they belong to the regiment of artillery artificers, and then their rank only to take place as officers of that corps: the pay also which they receive as officers in that regiment to be included in the pay herein settled for the officers of the Commissary-General's Department.

That a return be made to the Board of War and Ordnance, once every month, of all officers employed in the civil branch of ordnance and military stores.

All commissaries, deputy commissaries, conductors, and clerks who shall have the separate charge of any stores, are, on the first day of every month, to make out an exact return of all cannon and military stores of every species and denomination, one copy whereof they shall transmit to the Commissary-General, who is to put them into one general return, as heretofore directed, and one other copy thereof the said commissaries, deputy commissaries, conductors, and clerks are to send to the Board of War and Ordnance.

All the artillery artificers that are or may be employed at any armories, laboratories, foundries, or military magazines, (those employed with the army in the field excepted,) shall be under the immediate direction and subject to the orders and command of the Commissary-General, or the officer directed by him to take charge of the same.

The Quartermaster-General, his deputies, and assistants, shall give the Commissary-General every assistance of teams for the removal of public stores, and in case there be no quartermaster in the department or place from whence the stores are to be removed, the Commissary-General shall have power to procure teams in the way and manner that will best promote the public service.

All officers, artificers, and others in the Ordnance and Military Department shall be governed by the rules and articles of war, in the same manner as other officers in the artillery of the United States.

The Commissary-General shall give such forms or returns and instructions to his deputies, assistant commissaries, conductors, &c., as the service and situation of their department shall require; and all officers in this department are to attend to such orders and instructions as they shall receive from time to time from the Board of War and Ordnance or the Commissary-General.

All regulations incidental to the Department, and not enlarging the powers and authorities here given, shall be settled and made by the Board of War and Ordnance.

The Board of War and Ordnance shall transmit, from time to time, as the service shall render necessary, transcripts of all returns received from the Commissary-General of Military Stores, and also accounts of all ordnance and stores under their care, or belonging to the United States, and the places where the same are deposited, to the Commander-in-Chief of the armies of the United States, in order that he may make such requisitions of supplies for the army under his immediate command, or for the separate departments, as he shall think proper, and give such advice and directions as to the disposition of them as circumstances may from time to time require.

The commanding officer of artillery for the time being, in the grand army, with the chief-engineer, commissary of artillery, and eldest colonel of artillery in camp, or such of them as are present with the army, shall be a subordinate Board of Ordnance, under the direction of the Commander-in-chief or the Board of War and Ordnance, for transacting

all business of the Ordnance Department necessary to be done in the field, and to have the care of all ordnance and stores at camp; and in case of sudden exigency the Commissary-General of Military Stores shall be obliged to obey their directions, as to any supplies wanted by the army out of the stores not in camp; and the said Board shall correspond with and report their proceedings to the Board of War and Ordnance, from whom they are to receive any necessary assistance.

\* \* \* \* \*

That if the exigency of the service makes it necessary to employ, at any time or place, more artificers than the Commissary may have enlisted or can enlist, then he, his deputies or assistants, may engage them for the time of such necessity on the most reasonable terms possible, with the approbation of the Board of War and Ordnance.

\* \* \* \* \*

*Resolved*, That the Board of War and Ordnance be empowered to make a contract with Mr. Byers, as superintendent of a foundry of brass cannon.

On February 12, 1778,<sup>1</sup> a report of the Committee on the Treasury, to whom had been referred a letter from the Board of War, was taken into consideration, and it was thereupon—

*Resolved*, That a proper person be appointed to act as Secretary of Ordnance and Paymaster to the Board of War and Ordnance; that his salary shall be ninety dollars a month.

That the said Paymaster shall answer all warrants drawn on him by the Board of War and Ordnance out of the money which he shall receive by orders of Congress, and shall keep fair accounts of his payments, and make monthly returns thereof to the Board of Treasury; he shall also transmit returns once a month, or oftener, to the Paymaster-General, or other proper officer or officers, of all advances made to Continental troops or militia in actual service, in order that proper stoppages may be made.

That the Board of War and Ordnance shall from time to time make out the proper estimates of money to be advanced for the use of their Department, and lay the same before Congress, and all moneys granted by Congress on their application shall be applied to the purposes set forth in the said estimate.

On the same day<sup>2</sup> Congress proceeded to the election of a Secretary of Ordnance and Paymaster to the Board of War and Ordnance, and, the ballots being taken, Joseph Nourse, Esq., was elected.

On April 14, 1778,<sup>3</sup> it was—

*Resolved*, That the Commissary-General of Purchases have full power to appoint and remove every officer in his Department; that the Commissary-General shall from time to time, as the service may require, visit the armies and posts of the United States, and be subject to the orders of the Commander-in-Chief; that the Commissary-General shall not be obliged to reside at the place where Congress sit, but he shall there keep an office, to which all general returns in his Department shall be made, and which shall be under the inspection and direction of the Board of War. \* \* \*

<sup>1</sup>Jour. Cong., vol. 2, p. 442.    <sup>2</sup>Ibid., p. 442.    <sup>3</sup>Ibid., p. 511.



On February 18, 1779,<sup>1</sup> considerable modification was made in the Inspector-General's Department, and the Inspector-General was made "subject to the orders of Congress, the Board of War, and the Commander-in-Chief only."

Congress also on the same day<sup>2</sup> proceeded to consider the report of a committee appointed to confer with the Commander-in-Chief, and thereupon came to the following arrangement of the Department of Ordnance.

*Resolved*, That the commanding officer of artillery of the United States for the time being shall, under the general orders, and with the concurrence of the Commander-in-Chief, arrange and direct all business of the Ordnance Department necessary to be done in the field. The ordnance, arms, and military stores in the fixed magazines to be drawn out only by the orders of the Board of War and Ordnance—unless, in the course of the service, circumstances should occur in which the procuring such orders from the Board would, in the opinion of the Commander-in-Chief and commanding officer of artillery, occasion improper delays; and, in such cases, the commanding officer of artillery shall have the power to draw from the nearest magazines the supplies wanted for the army; and the different commissaries and directors of the magazines and laboratories shall, in such cases, immediately obey the orders of the commanding officer of artillery, informing the Board of War and Ordnance of the same. And, that the Commander-in-Chief and commanding officer of artillery may know in such cases where to send for necessary supplies, the Board of War and Ordnance shall cause monthly returns of all ordnance, arms, and military stores at the magazines and arsenals of the United States to be made to the Commander-in-Chief, who will communicate to the commanding officer of artillery the whole or any part of them, as he shall judge the good of the service requires. And as it may frequently happen that parts of the Army may be detached to such distances as to render their obtaining supplies, in the circumstances above mentioned, by the immediate orders of the Commander-in-Chief and commanding officer of artillery, inconvenient, in such cases the Commander-in-Chief and commanding officer of artillery shall give to the commanding officers of the detachment, and of the artillery annexed to it, proper directions for furnishing the detachment with the necessary supplies of ordnance, arms, and military stores; and the orders of the said commanding officers of the detachment, and of the artillery annexed to it, given pursuant to the said directions, shall be obeyed by the commissaries and directors at the magazines and laboratories as if given immediately by the Commander-in-Chief and commanding officer of artillery of the United States. Each commanding officer of artillery making these extraordinary draughts shall immediately give information thereof, and of the occasion of them, to the Board of War and Ordnance.

2. That there shall be a field commissary of military stores, to be appointed by the Board of War and Ordnance, who shall receive and issue all ordnance, arms, and military stores in the field, pursuant to the orders of the Commander-in-Chief and commanding officer of artillery. All orders for this purpose from the Commander-in-Chief to be directed to the commanding officer of artillery. The field commissary shall have so many deputies, conductors, and clerks, to be likewise appointed by

<sup>1</sup>Jour. Cong., vol. 3, p. 202.    <sup>2</sup> Ibid., p. 204.

the Board of War and Ordnance, as in the opinion of the Board, the Commander-in-Chief, and commanding officer of artillery, the service shall from time to time require.

3. The commanding officer of artillery, with the concurrence of the Commander-in-Chief, shall from time to time lay before the Board of War and Ordnance proper estimates (which are by the Board to be transmitted to Congress) of all ordnance, arms, and military stores necessary to be made and provided for the use of the army of the United States, that the necessary orders may be given concerning them.

4. That whenever the said commanding officer of artillery shall judge any particular directions necessary for, or alterations and improvements to be made in, the construction or preparation of ordnance, arms, and military stores of any kind, he shall communicate the same to the Board of War and Ordnance for their consideration; who shall thereupon give such orders for the artificers and laboratory men as they shall judge the good of the service requires.

5. That the field commissary of military stores, his deputies, conductors, and clerks, shall be independent of the Commissary-General of Military Stores; and the said field commissary shall make monthly returns of all ordnance, arms, and military stores received, issued, and remaining on hand to the Board of War and Ordnance, the Commander-in-Chief, and the commanding officer of artillery. His deputies and conductors also having the chief care of the military stores with any detached parts of the army, shall make the like returns to the Board of War and Ordnance, the respective officers commanding those detachments, their commanding officers of artillery, and the field commissary; and the latter shall draw the whole into one general return monthly, one copy whereof he shall transmit to the Board of War and Ordnance, one to the Commander-in-Chief, one to the commanding officer of artillery, and a fourth to the Commissary-General of Military Stores.

6. That all moneys necessary for the department of the field commissary of military stores shall be drawn out of the military chests by warrants from the Commander-in-Chief, and officers commanding detached parts of the army respectively; and the accounts of expenditures adjusted and settled by the auditors of accounts, once in every three months, and finally transmitted to the Treasury Board.

7. That, when it shall be thought necessary, the commanding officer of artillery shall send officers of artillery to visit the laboratories, foundries, and manufactories, to the intent that they may thereby gain an insight into the mechanical branches of their profession. And such number of artillery officers as, in the opinion of the commanding officer of artillery, with the concurrence of the Commander-in-Chief, can be spared from their duty in the field, shall at every convenient season be stationed at all or any of the principal laboratories, to be instructed in the laboratory art, that a knowledge thereof may be disseminated through the corps.

8. That the deputy field commissaries and conductors shall apply for and receive all ordnance, arms, and stores issued from the fixed arsenals and magazines. And to prevent any that are insufficient being carried into the field, the said commissaries and conductors shall receive none apparently unfit for service. And whenever any articles in the Ordnance Department in the field shall be so damaged that they cannot be there repaired, and are, by order of the commanding officer of artillery with the army, or with any detachment of it, sent to the Commissary-General of Military Stores, or any of his deputies, he and they shall receive the same, at such place as shall be the most convenient, and either immediately cause them to be repaired, or replace them with others fit for service, as shall be most conducive to the public interest.

9. That the appointments of the said field commissary and his subordinate officers be as follows, viz.:

|                            | Pay per<br>Month. | Subsis. per<br>Month. | Rations<br>per Day. |
|----------------------------|-------------------|-----------------------|---------------------|
| Of the Field Commissary... | \$75              | \$40                  | 1                   |
| “ Deputy Field “ ...       | 60                | 30                    | 1                   |
| “ Conductor.....           | 40                | 10                    | 1                   |
| “ Clerk.....               | 40                | 10                    | 1                   |

10. That there shall be one Surveyor of Ordnance, to be appointed annually from the colonels, the appointment to be made by the Board of War and Ordnance, until Congress shall direct otherwise. The officer thus appointed shall retain his rank in the artillery and all the benefits arising from it; but during the time of his surveyorship he shall not, except in extraordinary cases, or when called for by the Commander-in-Chief, perform any duty in the line. His duty as Surveyor shall be to examine into the construction, qualities, and condition of all cannon, carriages, arms, and materials for and preparation of every species of warlike stores, and to visit all the different arsenals, foundries, laboratories, and workshops belonging to the Ordnance Department of the United States, carefully noting every error and defect he shall discover, which, together with a general state of the Department, he shall report immediately to the Board of War and Ordnance, as well as the commanding officer of the artillery, with his ideas of any alterations and improvements proper to be made thereon. He shall also examine all ordnance and military stores in the field, and report the state of them to the commanding officer of artillery and the Board of War and Ordnance; and, for the purposes aforesaid, the commissaries of military stores, as well in the field as elsewhere, shall make returns to the said Surveyor, and shall expose to his view all the ordnance, arms, and stores, and all materials for the Ordnance Department in their custody. And the Surveyor shall examine the said stores, to ascertain whether the quality, quantity, and numbers agree with the return, and make report to the Board only. He shall likewise examine into the number of workmen employed in each branch of the Ordnance Department; and the principal in each branch shall make monthly returns of all work done within the month—one to the said Surveyor of Ordnance, and one to the Commissary-General of Military Stores; and each of the latter shall transmit copies thereof monthly to the Board of War and Ordnance.

11. For executing the duties before mentioned, and any others relating to the Ordnance Department, which the good of the service may from time to time require, the Board of War and Ordnance shall give to the said Surveyor such instructions as they shall think proper.

12. For defraying the expenses of the said Surveyor, in the exercise of his office, he shall be allowed seventy dollars per month, besides his appointments as a field officer of artillery.

13. That the commanding officer of artillery of the United States, for the performance of his duties thereinbefore prescribed, shall be allowed seventy-five dollars per month, and the commanding officer of artillery with any detached part of the army shall have a like allowance in proportion to his pay in the line.

On March 8, 1779, upon a letter from the Board of War,<sup>1</sup> it was—

*Resolved*, That all military commissions be filled up at the War Office and attested by their Secretary, and then presented for signing to the President of Congress, who shall sign the same; after signature by the

<sup>1</sup>Jour. Cong., vol. 3, p. 222.



President they shall be sent back to the War Office, and there registered verbatim in a book to be kept for that purpose; after having been examined by the Board, the seal of the Board of War and Ordnance, which the said Board are hereby authorized and directed to provide, shall be affixed to the certificates or attestation of the entries of all such commissions.

*Resolved*, That all appointments of officers in the Continental service by the respective States be, in the first instance, by warrant, certified in such manner as they shall severally direct, to the Board of War, whereupon proper commissions shall be made out in the manner above mentioned.

On March 11, 1779, on a report from the Board of War,<sup>1</sup> it was—

*Resolved*, That the engineers in the service of the United States shall be formed into a corps, and styled the "Corps of Engineers"; and shall take rank and enjoy the same rights, honors, and privileges with the other troops on the Continental establishment.

That a commandant of the corps of engineers shall be appointed by Congress, to whom their orders, or those of the Commander-in-Chief, shall be addressed; and such commandant shall render to the Commander-in-Chief and to the Board of War an account of every matter relative to his department.

That the engineers shall rank in their own corps according to the dates of their respective commissions.

That every year, previous to the opening of the campaign, the commandant of the corps shall propose to the Commander-in-Chief and to the Board of War such a disposition of the engineers as he shall judge most advantageous according to the knowledge which he is supposed to have of their talents and capacity.

*Resolved*, That the Board of War be empowered and directed to form such regulations for the Corps of Engineers and companies of sappers and miners as they judge most conducive to the public service, and that the Board report such allowances as they judge adequate and reasonable, to be made to the officers of the Corps of Engineers for traveling charges, and when on command at a distance from camp, or in places where they cannot draw rations.

On March 23, 1779, Congress took into consideration a report of a committee appointed to confer with the Commander-in-Chief, and thereupon passed an "Ordinance for regulating the Clothing Department for the Armies of the United States." The act<sup>2</sup> authorized the appointment of a Clothier-General, to be "subject to the orders of the Board of War and Commander-in-Chief"; a sub- or State Clothier for each State, to "reside with or near the army, or such detachment thereof in which the troops of the States might be, as the Commander-in-Chief shall direct, the better to know and supply their wants"; and regimental clothiers, in the persons of the regimental paymasters. The Board of War was directed to "prepare and transmit instructions and forms, according to which the several clothiers are to conduct the business and settle

<sup>1</sup> Jour. Cong., vol. 3, p. 224.

<sup>2</sup> Ibid., pp. 231-232.

their accounts," and to "report to Congress the proper salaries or allowances to be made to the several clothiers for their services."

On March 29, 1779,<sup>1</sup> Congress, upon a letter from the Board of War, representing that Baron Steuben, Inspector-General, had formed a system of exercise and discipline for the infantry of the United States, (which had been submitted to the inspection of the Commander-in-Chief, and whose remarks thereon and amendments thereto had been incorporated in the work,) and that it had been examined with attention by the Board, and was highly approved, as being calculated to produce important advantages to the States, and praying that it might "receive the sanction of Congress, and be committed to the press," passed the following order:

*Resolved*, That the \* \* \* regulations be observed by all the troops of the United States, and that all general and other officers cause the same to be executed with all possible exactness.

On April 8, 1779,<sup>2</sup> on a letter from the Board of War, it was—

*Resolved*, That the Board of War and Ordnance be authorized to appoint persons to purchase necessaries for the army, until the further orders of Congress.

On June 22, 1779,<sup>3</sup> on a report from the Board of War, it was—

*Resolved*, That the Adjutant-General, for the time being, be also Assistant Inspector-General.

On July 23, 1779,<sup>4</sup> on a plan reported by the Board of War, it was—

*Resolved*, That whensoever the business of the Hide Department shall require it in any State, the Board of War be authorized and directed to appoint a proper person to be Commissary of Hides therein, removable by the said Board for mismanagement, or when, by the alteration of circumstances in the particular State, no such officer is further necessary:

*Provided*, That when the business of the Department will admit of it, two or more States may, by the said Board, be put under the direction of one Commissary: that the Board of War draw up instructions from time to time for the direction and government of the Commissaries of Hides in the respective States, and they are hereby enjoined to regulate their conduct by such instructions.

On September 15, 1779,<sup>5</sup> on a report from the Committee on the Treasury, it was—

*Resolved*, That all applications in future for moneys for the use of the different departments under the direction of the Board of War be made to the Treasury by the paymaster of the said Board, who is instructed to have them previously certified by the Board of War; and that for all

<sup>1</sup> Jour. Cong., vol. 3, p. 237.

<sup>2</sup> Ibid., p. 246.

<sup>3</sup> Ibid., p. 310.

<sup>4</sup> Ibid., p. 328.    <sup>5</sup> Ibid., p. 360.

sums granted in consequence of such applications the said paymaster be accountable.

On November 25, 1779,<sup>1</sup> it was—

*Resolved*, That the departments of the Quartermaster-General and of the Commissaries-General of Purchases and Issues be, for the future, under the superintendency and direction of the Board of War; and that the committee of Congress on those departments deliver over to the Board of War all papers in their hands respecting them, and thereupon be discharged.

On November 30, 1779,<sup>2</sup> it was—

*Resolved*, That the Board of War be directed to procure from the Quartermaster-General, the Commissaries-General, the Forage-Master, and the Barrack-Master-General, a return of all the assistants, deputies, officers, agents, and other persons employed in their respective departments, the districts in which they are so employed, and the terms upon which they are engaged; and that such returns be made by the first day of January next.

On January 29, 1780,<sup>3</sup> Congress appointed a commission of three, one of whom was a member of Congress, to inquire into the expenses of the staff departments; to discharge supernumerary and delinquent officers and men; to break up unnecessary posts, and to establish posts where requisite; to stop all issues of rations and other supplies not indispensably necessary for the service; to repair to head-quarters, and, in conjunction with the Commander-in-Chief, to reduce the number of horses and wagons, and to adopt the cheapest and surest methods of transportation; and to institute any other measures for promoting economy in the several departments. Another committee of three members was authorized on April 6, 1780,<sup>4</sup> to proceed to camp to confer with the Commander-in-Chief on the subject of the reduction of the regiments, and on the subject of a report of a commission on the arrangement of the staff departments of the army. This committee was furnished with lengthy and minute instructions by Congress on the subject of their mission,<sup>5</sup> and granted full powers to form plans, with the concurrence of the Commander-in-Chief, for reforming all irregularities and abuses existing in these departments, and to discharge unnecessary officers and retrench expenses.

On July 15, 1780,<sup>6</sup> Congress adopted new regulations for the Quartermaster-General's Department. These regulations were set forth in great detail, and required the Quartermaster-General to make returns to the Commander-in-Chief and Board of War, of all officers and other persons employed, and

<sup>1</sup> Jour. Cong., vol. 3, p. 402.

<sup>2</sup> Ibid., p. 406.

<sup>3</sup> Ibid., p. 426.

<sup>4</sup> Ibid., p. 446.

<sup>5</sup> Ibid., p. 447.

<sup>6</sup> Ibid., p. 488.



stores belonging to the Department, and the Board of War was empowered to suspend and dismiss all supernumerary officers employed in the Department.

On August 12, 1780,<sup>1</sup> the Board of War, in pursuance of directions of Congress of July 25, 1780, to remove any unnecessary officers, and arrange the affairs of the Department of the Commissary-General of Military Stores in such manner as should be most conducive to the public interest, reported that they had retained in service one Commissary-General of Military Stores, one Deputy Commissary-General, one Commissary at Springfield, one Commissary at Carlisle, one Commissary in Virginia, and two or three other Commissaries at some subordinate posts or stations.

On September 25, 1780,<sup>2</sup> Congress increased and extended the powers of the Inspector-General's Department, and placed the discharge of its duties more immediately under the control and direction of the Commander-in-Chief and commanding officers of separate departments.

On September 30, 1780,<sup>3</sup> Congress revised and amended the regulations for conducting the affairs of the hospital department.

On November 30, 1780,<sup>4</sup> upon a letter from the Board of War, Congress resolved that there should be a Commissary-General of Purchases, whose duty it should be to purchase provisions under the direction of Congress, the Commander-in-Chief, or the Board of War, "to direct the quantities and species of provisions to be stored in the magazines of the several States under the orders of the Commander-in-Chief, and cause the same to be forwarded to the army as occasion should require; to make monthly returns to the Commander-in-Chief and Board of War of all persons employed by him, specifying for what time and on what terms, and of all provisions received each month and remaining on hand," &c.

On December 4, 1780,<sup>5</sup> Congress resolved—

That no officer of the line of the army of the United States, without express authority from Congress for that purpose, make any contract or bargain, or give any orders, for the purchase of articles for the use of the troops in the departments of the Clothier-General, Quartermaster-General, or Commissary-General of Purchases, except in cases of necessity for provisions and forage for detachments or parties in places where the same cannot be drawn from the public stores or magazines.

On February 7, 1781,<sup>6</sup> Congress resumed the consideration of a plan for the arrangement of the civil Executive

<sup>1</sup> Jour. Cong., vol. 3, p. 507.

<sup>2</sup> Ibid., p. 522.

<sup>3</sup> Ibid., p. 526.

<sup>4</sup> Ibid., p. 551.

<sup>5</sup> Ibid., p. 553.

<sup>6</sup> Ibid., p. 575.

Departments of the United States, and thereupon erected the several offices of Superintendent of Finance, Secretary at War, and Secretary of Marine, and prescribed the functions of each. It was resolved—

That the powers and duty of the Secretary at War shall be as follows :

To examine into the present state of the War Office, the returns and present state of the troops, ordnance, arms, ammunition, clothing, and supplies of the armies of these United States, and report the same to Congress ; to obtain and keep exact and regular returns of all the forces of the United States, and of all the military stores, equipments, and supplies in the magazines of the United States, or in other places for their use ; to take the immediate care of such as are not in actual service ; to form estimates of all such stores, equipments, and supplies as may be requisite for the military service, and for keeping up competent magazines, and to report the same to the Superintendent of Finance that he may take measures for procuring the same in such manner as may best suit the finances of these States ; \* to prepare estimates for paying and recruiting the armies of these United States, and lay them before the Superintendent of Finance so seasonably as to enable him to make provision without delay or derangement ; to execute all the resolutions of Congress respecting military preparations, and transmit all orders and resolutions relative to the military land forces of these United States ; to make out, seal, and countersign all military commissions, keep registers thereof, and publish annually a list of all appointments ; to report to Congress the officers necessary for assisting him in the business of his Department.

On July 18, 1781,<sup>1</sup> on a report of the Board of War, (who were continued as a Board until the Secretary at War should enter upon his office,<sup>2</sup>) it was—

*Resolved*, That the office of paymaster to the Board of War and Ordinance be abolished, and that the said paymaster do forthwith prepare his accounts for liquidation.

On July 30, 1781,<sup>3</sup> upon a report of the Board of War, it was—

*Resolved*, That the Board of War be, and they are hereby, empowered to continue such of the officers in the laboratory and artificers at Springfield as the good of the service may require, and to remove all and every other officer in the laboratory or corps of artificers at that place, and proceed to make such further reforms in the Department of the Commissary of Military Stores at other posts, as they judge may conduce to the public interest.

On September 4, 1781,<sup>4</sup> it was—

*Resolved*, That all the clothing, artillery, arms, and military stores shipped in pursuance of the orders of the Hon. John Laurens, special Minister to the Court of Versailles, for the use of the United States, be,

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\* It was one of the duties of the Superintendent of Finance to "direct and control all persons employed in procuring supplies for the public service, and in the expenditure of the public money ; and to obtain accounts of all the issues of the specific supplies furnished by the several States."

<sup>1</sup> Jour. Cong., vol. 3, p. 647.

<sup>2</sup> Ibid., pp. 673, 683.

<sup>3</sup> Ibid., p. 651.

<sup>4</sup> Ibid., p. 662.

upon their arrival in any of the ports of these United States, delivered to the order of the Board of War, who are hereby empowered and directed to take charge and direction of the same.

On October 1, 1781,<sup>1</sup> in view of the likelihood of selecting an army officer for appointment to the new office of Secretary of War, it was—

*Resolved*, That if an officer of the army shall be appointed Secretary at War, he shall retain his rank in the army, but his pay and other emoluments as an officer shall be discontinued while he acts as Secretary at War.

On the same day<sup>2</sup> the salary of the Secretary at War was fixed at \$4,000 specie per annum.

On October 30, 1781,<sup>3</sup> Major-General Lincoln was elected Secretary at War, and on November 19, 1781,<sup>4</sup> it was—

*Resolved*, That Richard Peters, Esq., be authorized and requested to continue to exercise the duties of the War Department until the Secretary at War shall enter upon the execution of his office.

On November 26, 1781,<sup>5</sup> Major-General B. Lincoln notified Congress of his acceptance of the office of Secretary at War.

On January 3, 1782,<sup>6</sup> Congress resolved on the reorganization of the Medical Department, and empowered the Secretary at War to arrange the Department, on or before the 1st of February ensuing, agreeably to the plan fixed by Congress. It also directed that thereafter all returns theretofore ordered to be made to the Medical Committee of Congress should be made to the Secretary at War.

On January 10, 1782,<sup>7</sup> the Inspector-General's Department was again reorganized, and the Inspector-General and inspectors of a separate army were made "subject only to the orders of Congress, the Secretary at War, Commander-in-Chief, or commanding officer of a separate army."

On January 17, 1782,<sup>8</sup> upon a letter from the Secretary at War, it was—

*Resolved*, That the Secretary at War be, and he is hereby, authorized to appoint the following officers, for whose conduct he shall be accountable, and who shall also be removable by him, to wit: One assistant, whose salary shall be \$1,250 per annum; one secretary, whose salary shall be \$1,000 per annum; the clerks, whose salary shall be the same as that of those in other public offices.

On April 10, 1782,<sup>9</sup> a committee which had been appointed to examine the powers vested in the late Board of War made a report, recommending such of them as appeared

<sup>1</sup> Jour. Cong., vol. 3, p. 673.

<sup>2</sup> Ibid., p. 673.

<sup>3</sup> Ibid., p. 683.

<sup>4</sup> Ibid., p. 690.

<sup>5</sup> Ibid., p. 693.

<sup>6</sup> Ibid., p. 707.

<sup>7</sup> Ibid., p. 711.

<sup>8</sup> Ibid., p. 713.

<sup>9</sup> Jour. Cong., vol. 4, p. 8.



necessary to be vested in the Secretary at War, and it was thereupon—

*Resolved*, That the following instructions and additional powers be given to and vested in the Secretary at War :

That the Commander-in-Chief be furnished with returns of ordnance and ordnance stores, when he shall request them from the War Office ;

That the Clothier-General receive his instructions from the War Office, and that the distributions of clothing for the army be made under the Secretary at War's directions ;

That the Secretary at War shall, in the absence of the Commander-in-Chief, be empowered to order the holding of general courts-martial in the places where Congress may be assembled ;

That the Commissary-General of prisoners, so far as respects the securing of military prisoners and making returns of them, take his directions from the Secretary at War ;

That estimates and returns from the different departments be lodged at the War Office, to be examined and approved of by the Secretary at War ;

That the Secretary at War direct the building and management of laboratories, arsenals, foundries, magazines, barracks, and other public buildings, the necessity of which he is from time to time to report, and the same is to be approved of by Congress ;

That the Secretary at War be empowered to send off expresses, and to provide guards for the safe conveyance of dispatches, money, and any articles necessary for the use of the army, whenever it shall appear to him to be necessary ;

That the care and direction of prisoners of war be vested in the Secretary at War, so far as respects their safe-keeping ;

That the Secretary at War execute all such matters as he shall be directed by Congress, and give his opinion on all such subjects as shall be referred to him by Congress ; and if at any time he shall think a measure necessary to which his powers are incompetent, he shall communicate the same to Congress for their direction therein ;

That all military and other officers attending upon or connected with the army of the United States be, and they are hereby, required and enjoined to observe the directions of the Secretary at War, in making and transmitting proper returns, and such other matters as may tend to facilitate the business of his Department.

On July 3, 1782,<sup>1</sup> it was resolved—

That the Secretary at War, in the absence of the Commander-in-Chief, be, and he is hereby, authorized to order all persons to be arrested and tried for disobedience of any orders which he is empowered to issue.

On October 23, 1782,<sup>2</sup> the Quartermaster's Department was again reorganized. The Quartermaster-General, with the concurrence of the Commander-in-Chief, was authorized to appoint all the officers in that Department for the armies of the United States ; and, with the approbation of the Secretary at War, to appoint as many assistants to reside in the several States as the public service might require.

On April 4, 1783,<sup>3</sup> Congress resolved—

That the several States be required to suspend all enlistments for any

<sup>1</sup>Jour. Cong., vol. 4, p. 44.

<sup>2</sup>Ibid., p. 96.

<sup>3</sup>Ibid., p. 181.

regiment or corps in the army of the United States until the further order of Congress.

And on April 7, 1783,<sup>1</sup> it resolved—

That the Secretary at War, in concert with the Commander-in-Chief, be, and he is hereby, directed to consider and report to Congress, as speedily as may be, such measures as it will be proper to take in the present juncture for reducing the expenses of the United States in the War Department.

On April 11, 1783,<sup>2</sup> Congress proclaimed the cessation of arms, as well by sea as by land, and enjoined the observance thereof.

Major-General Lincoln tendered his resignation<sup>3</sup> as Secretary of War, and it was accepted to take effect on November 12, 1783, and from this period until March 24, 1785, the business of the War Office was conducted by Mr. Joseph Carleton<sup>4</sup>, under the designation of "Secretary in the War Office." On March 8, 1785,<sup>5</sup> Congress proceeded to the election of a Secretary at War, when "Henry Knox, Esq.," was elected; he gave notice of his acceptance of the office on March 17, 1785.<sup>6</sup>

General Washington resigned his commission as Commander-in-Chief on December 23, 1783.<sup>7</sup> On January 29, 1784,<sup>8</sup> Congress resolved—

That the principals in the several Departments of Quartermaster-General, Commissary of Military Stores, Clothier, and of the Hospital, be, and they are hereby, ordered to transmit as soon as may be, to the War Office, to be laid before Congress, exact returns of all the stores in their respective Departments, specifying the quantity and quality of each article, where deposited, in whose care, and in what manner secured.

On May 26, 1784,<sup>9</sup> the following preamble and resolution were adopted by Congress:

Whereas different opinions exist in Congress respecting their authority to make requisitions on the several States for land forces in time of peace;

And whereas such a construction of the confederation as will enable Congress to make requisitions for a small number of land forces for a short period must admit an unlimited power to extend their requisitions, both with respect to numbers and time of service, and must preclude the States from a right of deliberating and leave them only an executive authority on the subject;

And whereas Congress being authorized to make foreign and domestic loans and to issue bills of credit, if permitted to raise land forces, as aforesaid, in time of peace, will be furnished with such coercive means as must be very alarming to the several States;

And whereas standing armies in time of peace are inconsistent with

<sup>1</sup>Jour. Cong., vol. 4, p. 165.

<sup>2</sup>Ibid., p. 186.

<sup>3</sup>Ibid., p. 304.

<sup>4</sup>Ibid., pp. 315, 332, 441, 446, 452, 488.

<sup>5</sup>Ibid., p. 478.

<sup>6</sup>Ibid., p. 490.

<sup>7</sup>Ibid., p. 318.

<sup>8</sup>Ibid., p. 332.

<sup>9</sup>Ibid., p. 413.

the principles of republican governments, dangerous to the liberties of a free people, and generally converted into destructive engines for establishing despotism;

And whereas the United States, being remote from nations that have peace establishments, may avoid the heavy expenses thereof by providing a small number of troops for garrisoning their posts and guarding their magazines, and by being always in a state of defense on the plan of the confederation, which provides that "every State shall always keep up a well-regulated and disciplined militia sufficiently armed and accoutered, and shall provide and have constantly ready for use in public stores a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage;"

And whereas in a matter so doubtful as it respects the authority of Congress, and of such high importance to the Union, it is expedient that the delegates should take the sense of their constituents on the subject, and it is the duty of Congress in the interim to suspend the exercise of the powers aforesaid for that purpose;

*It is therefore resolved*, That recommendations in lieu of requisitions shall be sent to the several States for raising the troops which may be immediately necessary for garrisoning the western posts and guarding the magazines of the United States, unless Congress should think it expedient to employ the Continental troops now at West Point in the service aforesaid.

On June 2, 1784,<sup>1</sup> it was—

*Resolved*, That the Commanding Officer be, and he is hereby, directed to discharge the troops now in the service of the United States, except 25 privates to guard the stores at Fort Pitt, and 55 to guard the stores at West Point and other magazines, with a proportionate number of officers—no officer to remain in service above the rank of a captain, and those privates to be retained who were enlisted on the best terms: *Provided*, Congress, before its recess, shall not take other measures respecting the disposition of those troops. That the arrearages of their pay and rations after the 3d of November last be settled in the same manner as the accounts of the troops lately discharged; and that the Superintendent of Finance take order for furnishing them two months' pay.

On May 29, 1784,<sup>2</sup> the Committee of the States was instructed to revise, among other things, the institution of the War Office, and to report such alterations as it might judge necessary; and on December 8, 1784,<sup>3</sup> Congress, upon receiving the report, ordered—

That the election of a Secretary at War be postponed until the United States in Congress assembled shall have determined on the ordinance for regulating the War Office.

Meanwhile Congress had determined to "recommend" to the States the raising a militia force<sup>4</sup> of seven hundred men for twelve months, to take possession of the western posts—as soon as evacuated by the troops of his Britannic Majesty—for the protection of the northwestern frontiers and for guarding the public stores, and the "Secretary in the War Office" was directed to take order for properly forming said

<sup>1</sup> Jour. Cong., vol. 4, p. 437.

<sup>2</sup> Ibid., p. 423.

<sup>3</sup> Ibid., p. 452.

<sup>4</sup> Ibid., p. 441.



troops when assembled, to arm and equip them, and to direct their destination and operations, subject to the order of Congress, and of the Committee of the States in the recess of Congress.

The ordinance for ascertaining the powers and duties of the Secretary at War was taken up for a third reading on January 27, 1785, and was passed on that day, as follows: <sup>1</sup>

An ordinance for ascertaining the powers and duties of the Secretary at War:

*Be it ordained by the United States in Congress assembled,* That the powers and duty of the Secretary at War shall be as follows, to wit:

To examine into the present state of the War Department, the returns and present state of the troops, ordnance, arms, ammunition, clothing, and supplies of the troops of these States, and report the same to Congress; to keep exact and regular returns of all the forces of these States, and of all the military stores, equipments, and supplies in the magazines of the United States, or in other places for their use; and to receive into his care, from the officers in whose possession they may be, all such as are not in actual service; to form estimates of all such stores, equipments, and supplies as may be requisite for the military service, and for keeping up competent magazines, and to report the same to the Commissioners of the Treasury of the United States, that measures may be taken in due time for procuring the same; to prepare estimates for paying and recruiting the troops of these United States; to carry into effect all ordinances and resolves of Congress for raising and equipping troops for the service of the United States, and for inspecting the said troops; and to direct the arrangement, destination, and operation of such troops as are or may be in service, subject to the orders of Congress, or of the Committee of the States in the recess of Congress; to make out, seal and countersign the commissions of all such military officers as shall be employed in the service of the United States; to take order for the transportation, safe-keeping, and distributing the necessary supplies for such troops and garrisons as may be kept up by the United States. He shall appoint and remove at pleasure all persons employed under him, and shall be responsible for their conduct in office; all which appointments shall be immediately certified to Congress, and such certificate, or the substance thereof, registered in a book to be kept for that purpose in the office of the Secretary of Congress. He shall keep a public and convenient office in the place where Congress shall reside. He shall, at least once a year, visit all the magazines and deposits of public stores, and report the state of them with proper arrangements to Congress; and shall twice a year, or oftener if thereto required, settle the accounts of his Department.

That as well the Secretary at War, as his assistants or clerks, before they shall enter on the duties of their office, shall respectively take and subscribe an oath or affirmation of fidelity to the United States, and for the faithful execution of the trust reposed in them; and which oaths or affirmations shall be administered by the Secretary of Congress, and a certificate thereof filed in his office. The oath of fidelity shall be in the words following:

"I, A. B., appointed to the office of ———, do acknowledge that I do owe faith and true allegiance to the United States of America; and I do swear (or affirm) that I will, to the utmost of my power, support, main-

<sup>1</sup> Jour. Cong., vol. 4, p. 462.

tain, and defend the said United States in their freedom, sovereignty, and independence, against all opposition whatsoever."

And the oath of office shall be in the words following:

"I, A. B., appointed to the office of ———, do swear (or affirm) that I will faithfully, truly, and impartially execute the office of ———, to which I am so appointed, according to the best of my skill and judgment; and that I will not disclose or reveal any thing that shall come to my knowledge in the execution of the said office, or from the confidence I may thereby acquire, which, in my own judgment, or by the injunction of my superiors, ought to be kept secret."

That the form of the oath of fidelity heretofore prescribed by Congress, and all former resolutions of Congress relative to the Department of War, be and they are hereby repealed.

Done by the United States in Congress assembled, &c.

It was on the 8th of March, subsequent to this enactment, that Major-General Henry Knox, as we have seen, was elected Secretary at War.<sup>1</sup>

On July 25, 1785,<sup>2</sup> upon a letter of the Secretary at War, and the report of a committee thereon, it was—

*Resolved*, That the Department of Quartermaster-General be considered as ceasing on the day of passing this resolution, and that the Secretary at War, and all others concerned, govern themselves accordingly.

On September 6, 1785,<sup>3</sup> it was—

*Ordered*, That the Secretary at War, as soon as may be, cause to be made and transmitted to Congress an exact return of all cannon, with their sizes and appendages; small-arms, with their accoutrements; swords, pistols, wagons, tents, ammunition, camp equipage, and public stores, or property of every description, the custody of which is charged on the Department of War, distinguishing the quantity or number, quality and kind of each, and the several places of their deposits; and that he transmit a like return on the first Monday in January and first Monday in July, annually.

On June 22, 1786,<sup>4</sup> it was—

*Resolved*, That the Secretary at War direct the commanding officer of the troops to detach two companies to the rapids of the Ohio, to protect the inhabitants from the incursions and depredations of the Indians.

And on October 20, 1786,<sup>5</sup> it was resolved to add 1,340 men to the troops then in service, making 2,040 in all, to be formed into a legionary corps for defense against the Indians; the Secretary at War to inform the executive authorities of the respective States in which the troops were to be raised of the number and rank of the commissioned officers needed from each State in proportion to the men. But on April 9, 1787,<sup>6</sup> Congress directed all troops raised under the call to be discharged, except two companies of artillery at Boston, Massachusetts, who were to be marched to Springfield, Massachusetts, and there take station.

<sup>1</sup> Jour. Cong., vol. 4, p. 478.

<sup>2</sup> Ibid., p. 553.

<sup>3</sup> Ibid., p. 567.

<sup>4</sup> Ibid., p. 655.

<sup>5</sup> Ibid., 714.

<sup>6</sup> Ibid., p. 733.

On October 2, 1788,<sup>1</sup> a committee of Congress, appointed to make full inquiry into the proceedings in the Department of War, presented to Congress a summary statement of the various branches of the Department, under the following heads, viz.:

1. Of the troops in the service of the United States. These troops numbered on that date 595 men, commanded by Brigadier-General Harmer.

2. Of the clothing for the troops.
3. Of the pay of the troops.
4. Of the stations occupied by the troops on the frontiers.
5. Of the discipline of the troops.
6. Of the mode in which the troops are furnished with provisions.
7. Of the Quartermaster's Department on the frontiers.
8. Of the supplies to the troops.
9. Of the Ordnance Department.
10. Of West Point and its dependencies.
11. Of the Canadian refugees.
12. Of the Indian Department.
13. Of the invalids.
14. Of the army lands.
15. Of the War Office.

Under this last head, the committee say:

The business of the War Office is conducted by the Secretary at War and three clerks and a messenger, whose salaries are as follows:

|   |         |
|---|---------|
| The Secretary at War.....                   | \$2,450 |
| Three clerks, at \$450 per annum each ..... | 1,350   |
| Messenger, per annum.....                   | 150     |
|   | <hr/>   |
|   | \$3,950 |

The contingent expenses of the office for stationery, firing, candles, and necessary conveniences for the papers, are averaged on the three last years to amount to about \$176 for each year.

The office of assistant secretary, whose salary was \$1,000 per annum, has been discontinued in this office since the commencement of the year 1786.

The accounts of pay and subsistence of the troops are examined and certified at the pay-office and transmitted to the War Office, on which the Secretary at War issues his warrants for the amount on the paymaster.

Regular registers are kept in the War Office of all warrants so drawn, specifying the objects for which they were granted.

Upon the foregoing statement, your committee beg leave to observe that, having carefully examined every part of it, they are of opinion that the arrangement of the business is judicious, and that the duties of the office are executed with ability and punctuality which reflect great honor on the Secretary at War.

Your committee think it their duty further to remark that great care appears to have been taken by the Secretary to reduce the expenses of his Department, as well by dispensing with the office of assistant secretary, formerly attached to it, and which has never been annulled by Congress, as by various economical arrangements and reforms in the other branches thereof.

<sup>1</sup> Jour. Cong., vol. 4, p. 874.



## **Secretaries of the Board of War and Ordnance.**

**1776 to 1781.**

COMPILED FROM THE JOURNALS OF CONGRESS.

RICHARD PETERS, elected Secretary to the Board of War and Ordnance, June 13, 1776; appointed a member of the Board of War, November 27, 1777.

JOSEPH NOURSE, elected Deputy Secretary to the Board of War, June 17, 1777; elected Secretary of Ordnance and Paymaster to the Board of War and Ordnance, February 12, 1778; resigned September 16, 1778.

Major PETER SCULL, elected Secretary to the Board of War and Ordnance, November 4, 1778; resigned September 1, 1779.

Captain BENJAMIN STODDART, elected Secretary to the Board of War and Ordnance, September 1, 1779; resigned February 14, 1781.

JOSEPH CARLETON, elected Secretary to the Board of Ordnance and Paymaster to the Board of War and Ordnance, October 27, 1779, to date back to resignation of Mr. Nourse, September 16, 1778; elected Secretary to the Board of War, February 17, 1781.

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## **Secretaries at War.**

**1781 to 1789.**

General BENJAMIN LINCOLN, elected Secretary at War, October 30, 1781; resigned October 29, 1783.

RICHARD PETERS, requested to continue to exercise the duties of the War Department until the Secretary at War should enter upon the duties of his office, November 19, 1781.

JOSEPH CARLETON, continued as "Secretary in the War Office," November 4, 1783, to March 24, 1785.

General HENRY KNOX, elected Secretary at War, March 8, 1785, and continued until adoption of the Constitution, in 1789.

## THE WAR DEPARTMENT FROM 1789.

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UNDER THE AUTHORITY OF THE CONSTITUTION AND THE LAWS  
PASSED IN PURSUANCE THEREOF.

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The Secretary at War, under the ordinance of February 7, 1781, became the legal custodian in place of the old Board of War, whose functions ceased<sup>1</sup> when the Secretary entered upon the execution of the duties of his office, of all the warlike stores of the country and of their depositories, and became thereafter the executive officer of the Confederation in all that related to the military service. Vested with authority "to carry into effect all ordinances and resolves of Congress for raising and equipping troops for the service of the United States," and "to direct the arrangement, destination, and operation of such troops," subject to the orders of Congress, or of the Committee of the States in the recess of Congress, it will be perceived that he was endowed with functions in respect to military matters little short of those vested in the Chief Executive under our present Constitution. By this latter instrument, adopted in 1789, the President of the United States was made the "Commander-in-Chief of the Army and Navy." In the organization of the Government under this new instrument, Congress proceeded, in 1789, to the establishment of the various great Executive Departments by whose agency the details of the public business were to be transacted, and on August 7 it enacted<sup>2</sup> "that there shall be an Executive Department, to be denominated the Department of War; and that there shall be a principal officer therein, to be called the Secretary for the Department of War, who shall perform and execute such duties as shall from time to time be enjoined on or intrusted to him by the President of the United States, agreeable to the Constitution, relative to military commissions, or to the land or naval forces, ships, or warlike stores of the United States, or to such other matters respecting military or naval affairs as the President of the United States shall assign to the said Department, or

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<sup>1</sup> Jour. Cong., vol. 3, p. 683.      <sup>2</sup> 1 Stat. Large, 49.

relative to the granting of lands to persons entitled thereto for military services rendered to the United States, or relative to Indian affairs; and, furthermore, that the said principal officer shall conduct the business of the said Department in such manner as the President of the United States shall from time to time order or instruct." The fourth section of the act directed that the Secretary should "forthwith, after his appointment, be entitled to have the custody and charge of all records, books, and papers in the office of Secretary for the Department of War heretofore established by the United States in Congress assembled."

It will thus be seen that the new Secretary of War was to supplant the old Secretary at War under the Confederation; and was to take possession of and be installed in his very office—even the records, books, and papers of that office taken into his hands; and that, under the direction of the President, he was, in addition to business relating to Indian affairs and pensions, to perform such duties relative to "matters respecting military or naval affairs," as should from time to time be enjoined on or intrusted to him by the President. The superior executive functions respecting military affairs which were vested in the Secretaryship under the Confederation being absorbed into the higher office of President under the new Constitution, without any provision being made by law for the discharge of the remaining duties of the old Secretary except by the new Secretary under this law, it is reasonable to presume that the new Secretary's functions were allowed by the President to remain the same as those of the old Secretary, so far as the latter were not inconsistent with the Constitution or the supremacy of the President as the chief executive power. Any subsequent alteration of these functions and duties, therefore, must be sought for in the laws of Congress and the Presidential orders affecting the Secretary's office.

An act of May 8, 1792,<sup>1</sup> directed that all purchases and contracts for supplying the troops in the service of the United States with provisions, clothing, supplies in the Quartermaster's Department, military goods, Indian goods, and all other supplies or articles for the use of the Department of War, should be made by, or under the direction of, the Treasury Department, and in 1795<sup>2</sup> the office of Purveyor of Public Supplies was erected in the Treasury Department for the purpose; but in 1798<sup>3</sup> the Purveyor was placed under

<sup>1</sup> 1 Stat. Large, 279.

<sup>2</sup> *Ibid.*, p. 419.

<sup>3</sup> *Ibid.*, p. 610.



the orders of the *Secretary of War* for the procuring and providing of all kinds of military stores and supplies.

In March, 1794,<sup>1</sup> an act was passed providing for the fortification, under the direction of the President, of certain ports and harbors on the eastern seaboard of the United States, and for the procurement of 100 32-pounders, 100 24-pounders with carriages and implements, and carriages and implements for 150 other cannon, and also 250 tons of cannon shot. The act also authorized the reception by the United States of lands ceded by the several States for sites for said fortifications. This was the first movement for the establishment of sea-coast fortifications, and the business connected with this undertaking fell under the direction of the Department of War, and was subsequently reported upon to the President by the *Secretary of War*.<sup>2</sup>

In December, 1793,<sup>3</sup> a statement was laid before the President by the *Secretary of War* of the ordnance, arms, and military stores in possession of the United States, and suggesting the erection of the necessary arsenals and magazines for their proper storage, as well as the advisability of undertaking the fabrication of cannon, arms, and ammunition. This communication being laid before Congress, an act was passed April 2, 1794,<sup>4</sup> providing for the erection, under the direction of the President of the United States, of three or four arsenals with magazines, and directing the establishment of national armories, with officers to be appointed by the President, and as many workmen as the *Secretary of War* might deem necessary, not over one hundred. An officer styled Superintendent of Military Stores was also directed to be appointed, whose duty it was, under the direction of the *Secretary of War*, to superintend the receiving, safe-keeping, and distribution of the military stores of the United States, and to call to account all persons to whom the same might be intrusted.

Further appropriations were made June 23, 1797,<sup>5</sup> for fortifying the ports and harbors of the United States; and on April 27, 1798,<sup>6</sup> an additional regiment of artilleryists and engineers was authorized for employment, in detachments or otherwise, in the field or in the fortifications on the sea coast; and the *Secretary of War* was directed to provide, at the public expense, under the direction of the President, all necessary books, instruments, and apparatus, for the use and benefit of the said regiment. In May, 1798,<sup>7</sup> in anticipation of the

<sup>1</sup> 1 Stat. Large, 345.

<sup>2</sup> Am. State Pap., Mil. Aff., vol. 1, p. 72-74. *et passim*. <sup>3</sup> Ibid., p. 44.

<sup>4</sup> 1 Stat. Large, 352. <sup>5</sup> Ibid., p. 521. <sup>6</sup> Ibid., p. 552. <sup>7</sup> Ibid., p. 555.

breaking out of war between this country and France, additional appropriations for the fortifications were made, as well as a large amount for the purchase, under the direction of the President, of cannon, small arms, and ammunition, and military stores, for the public safety and defense. The act authorized the President, in case the cannon and small arms could not be purchased with certainty and dispatch proportionate to the demands of service, to take, by lease or sale in fee, one or more suitable places where cannon or small arms might be advantageously cast and manufactured, and to cause suitable artisans and laborers to be employed, and to appoint persons to superintend the works, under the direction of the *War Department*. Congress also authorized, by act of May 28,<sup>1</sup> of that year, the raising of a "provisional" army, and empowered the President, whenever he should deem it expedient, to appoint, by and with the advice and consent of the Senate, a "commander of the army," who, "being commissioned as lieutenant-general, might be authorized to command the armies of the United States"—the latter to "appoint from time to time such number of *aides*, not exceeding four, and secretaries, not exceeding two, as he might judge proper, each to have the rank, pay, and emoluments of a lieutenant-colonel." The same act also authorized the appointment of an Inspector-General, an Adjutant-General, a Quartermaster-General, a Physician-General, and Paymaster-General, with such Assistant Inspectors to "every separate portion of the army" as might be necessary, who should be deputy Adjutant-Generals thereof, and sub-inspectors to each brigade and corps, &c.

The "commander of the army," and other officers to be appointed by virtue of the act, were to continue in commission during such term only as the President should judge requisite for the public service, the whole or any portion of the provisional army to be discharged whenever the President should judge the measure consistent with the public safety.

On June 22,<sup>2</sup> a supplementary act was approved, authorizing the President to proceed to appoint and commission as many of the officers authorized by the previous act as in his opinion the public service should more immediately require, with the proviso that the officers so appointed should not be entitled to any pay, subsistence, or other emoluments by reason of such commissions, until they should be employed in the actual service of the United States.

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<sup>1</sup> 1 Stat. Large, 558.

<sup>2</sup> *Ibid.*, p. 569.

In the emergency that was then upon the country, "the opinion was universally entertained that Washington must be called on to take the command of the armies." "The weight of his name and character was of the utmost importance to produce unanimity in the leaders, and to secure the confidence and support of the people." President Adams had said of him in his inaugural address in 1797: "His name may still be a rampart; and the knowledge that he lives, a bulwark against all open or secret enemies of his country's peace." Moved by these political considerations, therefore, President Adams wrote him at Mount Vernon, on the date of the approval of the last above-mentioned act, (June 22, 1798:) "We must have your name, if you will in any case permit us to use it. There will be more efficacy in it than in many an army." The Secretary of War, on June 26, wrote: "You see how the storm thickens, and that our vessel will soon require its ancient pilot. Will you—may we flatter ourselves that, in a crisis so awful and important, you will—accept the command of all our armies? I hope you will, because you alone can unite all hearts and all hands."

Answering the President and Secretary of War on July 4, 1798, General Washington, referring to his age and his retirement from public life, intimated his unwillingness to remain an idle spectator in case of "actual invasion of our territorial rights." Without waiting for his reply, however, the President had, on the 2d of the month, nominated him "to be lieutenant-general and commander-in-chief of all the armies raised, or to be raised, in the United States." The Senate advised and consented to the appointment, "agreeably to the nomination," on July 3d, and the President, in communicating to him on the 7th the step he had ventured to take, said: "If it had been in my power to nominate you to be President of the United States, I should have done it with less hesitation and more pleasure."

In his letter of acceptance of July 13, General Washington said: "I have finally determined to accept the commission of Commander-in-Chief of the armies of the United States, with the reserve only, that I shall not be called into the field until the army is in a situation to require my presence, or it becomes indispensable by the urgency of circumstances;" and further, in pursuance of the proviso in the act of June 22, he said: "I take the liberty, also, to mention that I must decline having my acceptance considered as drawing after it any immediate charge upon the public, and that I cannot



receive any emoluments annexed to the appointment before entering into a situation to incur expense."<sup>1</sup>

The act of March 3, 1799,<sup>2</sup> for "the better organizing of the troops of the United States, and for other purposes," enacted, by its 9th section, "that a commander of the army of the United States shall be appointed, and commissioned by the style of 'General of the Armies of the United States,' and the present office and title of Lieutenant-General shall thereafter be abolished."

To understand this legislation and its legal effect, we must have recourse to the history of the times, which may be found succinctly stated by the Attorney-General in an official opinion delivered August 24, 1855,<sup>3</sup> as follows:

"I have said that this series of acts appertained to the hostilities between the United States under the administration of President Adams and the French Republic under that of the Directory. It was a state of partial or imperfect war; that is, war with limited range, and objects wholly maritime. (*Bas vs. Tingy*, 4 Dallas, p. 37 43.) We had broken off ordinary diplomatic relations with France. A special mission to that country from the United States had failed by reason of misconduct of the Directory. We had annulled all existing treaties with France. We were capturing one another's ships. We were engaged on one side in earnest preparation for the moment when the partial war should become a perfect one by land as well as by sea. The War Department had, for greater efficiency, been subdivided, and the Navy Department organized. [Act of April 30, 1798.] Congress was placing at the disposal of the President all the means, material and personal, of raising a large army for the defense of the United States; and General Washington was called from his retirement of Mount Vernon to be commander of this army, with the rank and title of Lieutenant-General. Such was the notorious history; but in the less notorious—and, so to speak, the internal history—is to be found the true explanation of events. What was heretofore imperfectly known, is now thoroughly understood by means of the published correspondence of Washington, Jefferson, Hamilton, Pickering, Walcott, and lastly of Adams, viz.: That while the Cabinet of the President was earnest for active and complete war, he held back; that he looked to the renewal of negotiations, which they strenuously opposed; that some of

<sup>1</sup> Hickey's Constitution, pp. 231-239.

<sup>2</sup> 1 Stat. Large, 749. <sup>3</sup> 7 Opin., 453.

them labored under the extraordinary delusion that the Bourbons were on the immediate eve of being restored by the arms of England; and that he, with fuller knowledge and clearer perception of the state of things in Europe, already discerned in the horizon the rising star of Napoleon; and finally that they differed on this very point of the military title of the person to command the army, he preferring 'Lieutenant-General' to 'General of the Armies of the United States,' which, in his view, touched, if it did not encroach upon, the constitutional functions of the President." \* \* \*

"General Washington died in office under this commission, [Lieutenant-General;] the proposed new appointment of General was not conferred upon him. (Am. St. Pap., Mil. Aff., Vol. 1, p. 147.) The Executive journals show this; and also that, on the death of General Washington, no appointment was made in his place to the new office of General. Of course, therefore, the 9th section of the act of 1799 remained without effect—not, in fact, abolishing either the office or the pay of the Lieutenant-General. Meanwhile a new embassy to France had been appointed; (Sen. Ex. Jour., Vol. 1, p. 317;) it had proceeded to Europe; the Directory had fallen; and Napoleon Bonaparte had become First Consul, November 9, 1799, and there was every prospect of a speedy settlement of our difficulties with France. Under these circumstances an act was passed, on the 20th of February, 1800, to suspend enlistments under the act of July 16, 1798, (2 Stat. at Large, p. 7.) and on the 14th of May, 1800, an act supplementary thereto, which authorized the President to suspend any further military appointments under the act of July 16, 1798, and under the 9th section of the act of March 3, 1799, and also authorizing him to discharge certain officers, but which repealed nothing of any previous statute. (2 Stat. Large, p. 85.) Here it needs only to remark that by this act, the omission of the President to appoint a 'General' and thus to produce the contingency on which the office of Lieutenant-General would become abolished, was expressly sanctioned by Congress."

The act of May 28, 1798,<sup>1</sup> authorizing the appointment of the Lieutenant-General, empowered the President to loan, at the request of the executives of the States from which militia might be called forth for active service under the orders of the President, and at the request of volunteer corps appearing to be unavoidably deficient, a supply of field artillery,

<sup>1</sup> 1 Stat. Large, 558.

arms, and accoutrements from the arsenals of the United States, proper receipts and security being given to be accountable to return the same, the accidents of the service excepted. It also authorized the President to cause to be purchased and procured a quantity of "caps, swords, or sabres, and pistols with holsters," sufficient for 4,000 cavalry, to be supplied to any corps of cavalry called into actual service, as a loan upon the same terms and conditions as above.

Act of June 22, 1798,<sup>1</sup> authorized the sale of artillery, arms, &c., to volunteers, if they desired to purchase them, the proceeds to be applied to the purchase of other artillery, arms, &c., as the President might direct. Act of July 6,<sup>2</sup> authorized the procurement of 30,000 stands of arms to be held for sale to the governments of the respective States, or the militia thereof, or for delivery to the militia when called into the service of the United States, proper receipts and security in which last cases being required for the safe return of the same.

March 2, 1799,<sup>3</sup> the Medical Department of the army and navy of the United States was established, the Physician-General being empowered to draw up a system of directions, police regulations, &c., for the hospitals of the Department, these directions, &c., to be subject, in the first instance, to the approbation and revision of the Commander-in-Chief, the commander of a separate army, or in a separate district, as the case might be, and eventually to the control of the President of the United States.

As early as 1794,<sup>4</sup> Congress had laid an embargo on the exportation of any "cannon, muskets, pistols, bayonets, swords, cutlasses, musket-balls, lead, bombs, grenades, gunpowder, sulphur, or saltpetre," and had encouraged the importation of all articles of these classes by admitting them free of duty. These materials had theretofore been directed by law to be obtained for the use of the United States through the Treasury Department; but in 1798 (act of July 16<sup>5</sup>) Congress directed that thereafter "all purchases of and contracts for supplies for the military \* \* \* service of the United States shall be made by or under the direction of the *chief officer of the Department of War*"; and the Purveyor of Public Supplies was directed to execute all orders received from him for procuring and providing all kinds of stores and supplies. By act of March 3, 1799,<sup>6</sup> the *Secretary of*

<sup>1</sup> 1 Stat. Large, 569.    <sup>2</sup> *Ibid.*, p. 576.    <sup>3</sup> *Ibid.*, p. 721.    <sup>4</sup> *Ibid.*, p. 369.  
<sup>5</sup> *Ibid.*, p. 610.    <sup>6</sup> *Ibid.*, p. 749.



War was himself authorized to "make purchases and enter, or cause to be entered into, all necessary contracts or obligations" for providing "in each and every year all clothing, camp utensils, and equipage, medicines, and hospital stores necessary for the troops and armies of the United States for the succeeding year."

These extracts from, and references to, the laws show the general character of legislative provisions up to this period for placing the country in a condition of defense. The procurement of provisions, clothing, and quartermaster's supplies, military goods, arms, and other stores for the military service, medicine, and hospital stores, was to be effected either by the *Secretary of War* himself, or by the Purveyor of Public Supplies acting under his direction. An armory was in operation at Springfield, Massachusetts, under the direction of the *Secretary of War*, which from January, 1795, to September, 1799, turned out 6,224 stands of arms, the production of the entire establishment during the last-named month being at the rate of 17 stands per day, employing 130 to 150 workmen.<sup>1</sup> A few private establishments were also engaged, under contracts with the Government, in the manufacture of arms.<sup>2</sup> Cannon of foreign and domestic manufacture were procured through the Treasury Department, with whom contracts were made in 1794 and 1796 by founders in Rhode Island and Maryland, for the delivery of 84 32-pounders, 234 24-pounders, and 40 12-pounders, to be of home production; but of this number only 34 32-pounders, 146 24-pounders, and 3 12-pounders had been delivered by April, 1798.<sup>3</sup> The fortifications on the sea coast thus far erected were embarrassingly few in number, of the most primitive construction, and none calculated for an armament heavier than a few 32-pounders and 24-pounders.<sup>4</sup>

These were the early days of the young Republic, and these were the only governmental provisions and agencies existing in those times for meeting the contingency of a war threatened by a powerful and victorious enemy. The paucity of the national resources; the lack of adequate means of defense; the want of harmonious adjustment of the machinery of National and State Governments; the political dissensions of the times; the hitherto unsettled relation of the militia to the National Government; the question of arming them for war; the absence of all precedent for the guid-

<sup>1</sup> Am. State Pap., Mil. Aff., vol. 1, pp. 131, 132.

<sup>2</sup> *Ibid.*, p. 110.

<sup>3</sup> *Ibid.*, p. 123. <sup>4</sup> *Ibid.*, p. 110 *et seq.*

ance of statesmen in this hour of trial of a new, untested, and complicated form of government—in the presence of all these embarrassments, what wonder that the Government, in its perplexity, should turn towards the hero of the Revolution as its military leader, and confer upon him rank comporting with the dignity of his exalted character—a character whose various talents, “combining all the capacities of a statesman with those of a soldier, fitted him alike to guide the councils and the armies of our nation.” The choice of his military title was made by Congress in 1798, and was fixed as Lieutenant-General. On the 31st December of that year,<sup>1</sup> however, a communication from the Secretary of War, on military subjects, was transmitted to Congress by the President, in which occurred the following in regard to the term “lieutenant-colonel,” which was the designation at that period of the commanding officer of a regiment:

“The term ‘lieutenant-colonel’ in our present establishment has a relative signification, without anything in fact to which it relates. It was introduced during our revolutionary war to facilitate exchanges of prisoners, as our then enemy united the grade of colonel with that of general. But the permanent forms of our military system ought to be regulated by principle, not by the changeable and arbitrary arrangement of a particular nation. The title of colonel, which has greater respectability, is more proper for the commander of a regiment, because it does not, like the other, imply a relation having no existence.”

By the law which followed, (March 3, 1799,) the title of lieutenant-colonel was retained in the army, but that of “General of the Armies of the United States” was created to take the place of *lieutenant-general*, as we have seen. This grade of “General of the Armies of the United States,” however, was never conferred by the President, who considered it as interfering with the Constitutional functions of the Presidential office in its relations to the army of the United States.

The act to reduce and fix the military service at a peace basis in 1802,<sup>2</sup> provided for 1 brigadier-general, 1 adjutant and inspector-general, 1 paymaster, 1 *aide* to the brigadier-general, 1 regiment of artillerists, 2 regiments of infantry, and the corps of engineers. Three military agents were provided by this act whose duty it was to “purchase, receive, and forward to their proper destination all military stores and

<sup>1</sup> Am. State Pap., Mil. Aff., vol. 1, p. 124.

<sup>2</sup> 2 Stat. Large, 132.

other articles for the troops in their respective departments, and all goods and annuities for the Indians, which they might be directed to purchase, or which might be ordered into their care, by the *Department of War*." They were "to account with the *Department of War*, annually, for all the public property which passed through their hands." By the same act the paymasters were given charge of the clothing of the troops. In this year the Corps of Engineers was constituted a Military Academy at West Point, the superintendence of the academy being placed under the principal engineer.<sup>1</sup>

Much solicitude for the proper organization, armament, and disciplining of the militia of the country was manifested in Congress during the period following the passage of the act of 1792, to "more effectually provide for the national defense by establishing an uniform militia throughout the United States," and measures looking to the improvement of the system laid down by that act were constantly engaging the attention of that body for a number of years afterwards. In 1794<sup>2</sup> a committee of the House appointed to prepare a plan for the better organizing, arming, and disciplining the militia, reported that—

"The principal difficulties and inconveniences which have occurred in the execution of the militia system particularly respect the incompetent provision for arming them, and for calling them forth to execute the laws of the United States, suppress insurrections, and repel invasions. It appears to the Committee that the principal defects in the existing provisions for arming the militia consist in the want of a competent *source* of supplying the arms, the want of some provision for *furnishing* persons with arms who may be deemed unable to furnish themselves, and the want of adequate and uniform penalties to *enforce* a compliance with the requisitions of the existing militia laws."

In 1803<sup>3</sup> a committee of the House to whom was referred that part of the President's message of December 15, 1802, inviting a review of the militia laws, reported a resolution requesting the President to write to the Executive of each State—

"Urging the importance and indispensable necessity of vigorous exertions on the part of the State Governments to carry into effect the militia system adopted by the national legislature agreeably to the powers reserved to the States re-

<sup>1</sup> 2 Stat. Large, 132.

<sup>2</sup> Am. State Pap., Mil. Aff., vol. 1, p. 107.

<sup>3</sup> Ibid., p. 163.



spectively by the Constitution of the United States, and in a manner the best calculated to insure such a degree of military discipline and knowledge of tactics as will, under the auspices of a benign Providence, render the militia a sure and permanent bulwark of national defense."

An act<sup>1</sup> was passed in this year, in addition to the militia act of 1792, which contained the following inefficient provision:

"That every citizen duly enrolled in the militia shall be constantly provided with arms, accoutrements, and ammunition, agreeable to the directions of the said act, from and after he shall be duly notified of his enrollment; and any notice or warning to the citizen so enrolled to attend a company, battalion, or regimental muster or training which shall be according to the laws of the State in which it is given for that purpose, shall be deemed a legal notice of his enrollment."

Again, in January, 1806, the subject of a new organization and classification of the militia was suggested by the President, but it was not deemed expedient by Congress at that particular time to derange the existing system of 1792, the militia being considered competent to a defense against an invading enemy, and a change at that juncture being considered as putting too much at risk.<sup>2</sup> A committee was, however, appointed by the House, with instructions to inquire what measures were necessary to complete the *arming* of the militia, and that committee reported<sup>3</sup> as follows:

"That, by the laws of the United States, each citizen enrolled in the militia is put under obligations to provide himself with a good musket or rifle, and all the other military equipments prescribed by law. From the best estimate which the Committee have been able to form, there are upwards of 250,000 firearms and rifles in the hands of the militia, which have, a few instances excepted, been provided by, and are the property of, the individuals who hold them. It is highly probable that many more of the militia would have provided themselves with firearms in the same way, if they had been for sale in those parts of the United States where the deficiencies have happened; but the wars in Europe have had a tendency to prevent the importation of firearms from thence into the United States, which, together with the limited establishments for the manufacture of that imple-

<sup>1</sup> 2 Stat. Large, 207.

<sup>2</sup> Am. State Pap., Mil. Aff., vol. 1, p. 189.

<sup>3</sup> Ibid., p. 198.

ment in the United States, has rendered it impossible for individuals to procure them. There are several State magazines of firearms, but the amount of the number of stands has not been ascertained. There are in the magazines of the United States about 120,000 firearms and rifles fit for use, and about 12,000 which need repairs. It is conceived that the number of firearms in the public magazines is not greater than ought to remain there in time of peace. And the Committee are of opinion that, to provide for the exigency of war, it will be expedient to extend the manufacture of firearms in the armories of the United States, as far as can conveniently be done without the erection of new buildings; to effect which it will be necessary to appropriate for that purpose \$62,100, in addition to the sums reported in the general estimate."

The act of February 24, 1807,<sup>1</sup> authorizing the President to accept the services of a number of volunteer companies—artillery, cavalry, and infantry—not to exceed 30,000 men, directed that the companies should—

—“be clothed and furnished with horses at their own expense, and armed and equipped at the expense of the United States after they shall be called into service, except such of them as may choose to furnish their own arms.”

And it was provided—

“That in case any volunteer above mentioned while in actual service shall sustain any damage by injury done to his horse or such other equipments as shall have been furnished at his own expense, or by loss of the same without any fault or negligence on his part, a reasonable sum, to be ascertained in such manner as the President of the United States may direct, shall be allowed and paid to such volunteer for each and every such damage or loss.”

In November, 1807, a resolution of the House directed a committee to “inquire into the expediency of selling to individual States or Territories, which may wish to purchase, any arms or ordnance owned by the United States, and which may be parted with without injury to the public”; and, upon their favorable recommendation of the measure, Congress directed<sup>2</sup> sales to be made to the States, the proceeds to be applied to the purchase or manufacture of other arms for the use of the United States.

Many States were not, in these times, well provided with

<sup>1</sup>2 Stat. Large, 419.

<sup>2</sup>Ibid., 481.

arms, and were anxious to purchase from the United States, there being great difficulty in getting arms from abroad.

A resolution<sup>1</sup> offered at the same session, by Mr. Randolph of Virginia, expressed the sense of the House—"that provision ought to be made by law for arming and equipping the whole body of the militia of the United States;"—and a bill being brought in for the purpose it was, after much debate, finally passed, and became a law on April 23, 1808.

In the bill, as originally introduced, the amount of the annual appropriation intended to be made was left blank. In Committee of the Whole<sup>2</sup> it was proposed to fill the blank with the sum of \$1,000,000, which amount, it was asserted, would arm but about 100,000 men, in which ratio it would require five or six years to arm the whole body of the militia, excluding from consideration the intermediate increase of population. It was confessed that the people of the country at that time were unable to manufacture arms for themselves, even with the aid of the Government, and it was therefore urged to be the duty of the nation itself to provide arms for them; it being a hardship in the existing militia laws to require every man to provide his musket at his own expense. It was claimed at the same time that the arms, when once bestowed by the National Government, should be held independent of it, and not be subject to recall at the option of that power; the intention being to secure permanency to the freedom of the individual,—“for,” as Mr. Randolph said, “it was not possible that a nation, free and armed, could have their liberties taken from them until they were reduced to that state that it is impossible to keep them free—nations, in this respect, being like men: if once they become dissolute it was impossible to compel them to attend to their true interests; but, at the same time, every encouragement should be given to men and nations, by a good education and good habits, to induce them to remain free and independent.”

It was the opinion of some of the statesmen of that period that the arms should be given gratuitously to the individuals; some were for selling the arms to them, some for keeping them in arsenals for the use of the militia, and some were in favor of sending them to the Governments of the several States and Territories *in trust* for such portions of the whole body of the militia as were residents within their respective limits. This latter method was the one finally adopted.

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<sup>1</sup> Annals of Cong., 10th Cong., 1st sess., vol. 2, pp. 1005, 1055. <sup>2</sup> Ibid., pp. 2175, 2197.

The amount of the permanent annual appropriation was fixed at \$200,000, after the respective sums of \$1,000,000, \$500,000, \$450,000, \$400,000, and \$300,000 had been successively proposed and rejected.

The first arms procured under this enactment\* were made by private parties under contract with the War Department.<sup>1</sup> Large advances of public moneys were made by the Secretary of War to these contractors for the purpose of building up the gun-making industries of the country, in aid of the National Armories, so that the demand for military weapons might thereafter be supplied by home production instead of by foreign importation.

The advisability of making preparations for whatever events might affect our relations with foreign nations growing out of the contests between France and the other European powers was pressed upon the attention of Congress at various times throughout President Jefferson's administration; and in February, 1808,<sup>2</sup> the Secretary of War (General Henry Dearborn) proposed the expediency of augmenting the army by the addition of 24,000 men. In his communication, which was submitted by the President to Congress, he said:

"In the event of war, it will, I presume, be considered necessary to arrange our military force into separate departments, and to have a commander to each department, and, of course, to have no such officer as a Commander-in-Chief; and until a larger army shall be raised than is now proposed it may not be advisable to have any officers above the rank of brigadier-general; of that grade it may be proper to have four or five, as soon as a suitable proportion of the troops is raised."

Congress authorized the raising of an additional force, by act of April 12, 1808,<sup>3</sup> and two brigadier-generals, in addition to the one already in service, were also authorized. These three brigadiers exercised their commands independent of each other, being each of them controlled and directed by the War Department. Meanwhile the existing system of procurement and distribution of quartermaster and other supplies, by means of the military agents, was found to occasion inconveniences and embarrassments, resulting in positive

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\*Arms are supplied to the militia of the several States at the present day under the law of April 23, 1808, now embodied in the Revised Statutes.

<sup>1</sup> Am. State Pap., Mil. Aff., vol. 1, p. 335.

<sup>2</sup> Ibid., p. 227.

<sup>3</sup> 2 Stat. Large, 481.



neglect and loss of public property. The serious defects of the system then in vogue were pointed out by the Secretary of War on January 1, 1810,<sup>1</sup> in a communication to the Senate Military Committee. No action was taken on the subject, however, until 1812.

During the period anterior to the war of 1812, all business relating to the military branch of service (as well as naval, up to 1798) had been transacted through the office of the *Secretary of War*, or under the direction of that officer. This business had found its way into his hands either through direct assignment by the President, or by the naming of the Secretary in the laws passed by Congress and approved by the President. The relations between the President and Secretary of War were left untrammelled by any restrictions in the act of 1789, creating the War Department, and it is a noticeable feature that nearly all the earlier acts in relation to military affairs were addressed to the President of the United States. The reasons for this may be surmised from the fact that the Secretary of War had been made the legal successor in office to the Secretary at War under the Confederation, the latter having possessed prerogatives in certain particulars coextensive with those of the President under the new Constitution. It became necessary, therefore, in order to secure a harmonious adjustment between the President and the Secretary of War under the new Government, to make the latter entirely subordinate to and dependent upon the former in all matters properly falling within the limits of his Department. In course of time this adjustment became fixed and well-settled, and became the subject of legislative recognition. We therefore find the laws beginning to name the Secretary of War in connection with matters falling within his Department as the active agent of execution—in all which cases the Secretary became the exclusive agent, subject only to the supervising control of the Chief Executive, whose duty it is simply to take care that the laws are faithfully executed. As an illustration of this exclusive agency, when the agent is nominated in the law, the following case may be put: The same session of Congress (2d session, 5th Congress) which created the grade of lieutenant-general, also prescribed that all purchases of and contracts for supplies or services for the military service should be made by, or under the direction of, the *chief officer of the Department of War*. Here the jurisdiction over military purchases and contracts was vested in

<sup>1</sup> Am. State Pap., Mil. Aff., vol. 1, p. 256.

the Secretary of War, to the exclusion of every other officer of Government, whether of the army or not. Neither Lieutenant-General Washington nor the President himself could, in face of this enactment, have displaced the civil incumbent of the War Department from his statutory jurisdiction, on any imaginary principles of *military* administration or command. General Washington certainly never dreamed of such a thing, for, knowing that his sphere of usefulness was in the "field," and that it was expected of him to give his services in that quarter, he, in accepting his commission, begged that, on account of the infirmity of age, he might not be required to take the "field" until the urgency of circumstances should render it necessary. The military powers and functions which his latter commission bestowed on him must not be confounded with those vested in him during the revolutionary war, since at that time it could hardly have been said that an organized national government, complete in the necessary details of administration, was in existence, and the powers of the General and Commander-in-Chief of the Armies of the United Colonies were therefore limited, in the exigencies of those times, by such bounds only as the exalted patriotism of that officer inspired him to place upon them. Through his success, the establishment of national civil government, combining all the limitations upon the powers of subordinate agents which human wisdom had demonstrated to be necessary, was rendered possible. In accepting a military commission from this organized government after its erection, can it be said that, in the absence of overwhelming disaster or hopeless emergency, authority flowing from such commission permitted him to ignore any one safeguard which had been erected in the interest of civil government? General Washington's own life and utterances vindicate him from so erroneous a notion.

The notion of maintaining a standing army, especially in times of peace, had ever been repulsive to those sages and patriots by whom the foundations of our Government were laid; and in the years just succeeding the organization of the Government under the Constitution, we find various measures suggested whereby to obviate, as far as possible, the necessity for the maintenance by the general Government of a standing army in the midst of the people. In submitting his celebrated scheme for the arrangement of the militia in 1790,<sup>1</sup> General Henry Knox (Secretary of War at that time,

<sup>1</sup>Am. State Pap., Mil. Aff., vol. 1, p. 7.

and compatriot of Washington in the revolutionary war) said:

"It is the misfortune of modern ages that governments have been formed by chance and events, instead of system; that, without fixed principles, they are braced or relaxed from time to time according to the predominating power of the rulers or the ruled—the rulers possessing separate interests from the people, excepting in some of the high-conditioned monarchies, in which all opposition to the will of the princes seems annihilated. Hence we look around Europe in vain for an extensive government, rising on the power inherent in the people, and performing its operations entirely for their benefit. But we find artificial force governing everywhere, and the people, generally, made subservient to the elevation and caprice of the few,—almost every nation appearing to be busily employed in conducting some external war, grappling with internal commotion, or endeavoring to extricate itself from impending debts, which threatened to overwhelm it with ruin. Princes and ministers seem neither to have leisure nor inclination to bring forward institutions for diffusing general strength, knowledge, and happiness; but they seem to understand well the Machiavelian maxim of politics—divide and govern. \* \* The modern practice of Europe, with respect to the employment of standing armies, has created such a mass of opinion in their favor that even philosophers and the advocates for liberty have frequently confessed their use and necessity in certain cases. *But whoever seriously and candidly estimates the power of discipline and the tendency of military habits will be constrained to confess that, whatever may be the efficacy of a standing army in war, it cannot in peace be considered as friendly to the rights of human nature.* The recent instance in France cannot with propriety be brought to overturn the general principle, built upon the uniform experience of mankind. \* \* An energetic national militia is to be regarded as the *capital security* of a free republic, and not a standing army, forming a *distinct class* in the community. It is the introduction and diffusion of vice and corruption of manners into the mass of the people that render a standing army necessary. It is when public spirit is despised, and avarice, indolence, and effeminacy of manners predominate and prevent the establishment of institutions which would elevate the minds of the youth in the paths of virtue and honor, that a standing army is formed and riveted forever."

The spirit of this remarkable document will be found, upon

examination, to have exercised a controlling influence over the policy of the Government in respect to military affairs for a long period after its promulgation, and its sentiments are traceable in the drift of Congressional legislation for many years thereafter. The act of 1792, providing for the *national* defense by the establishment of an uniform militia throughout the United States, and the act of 1808 making a permanent annual appropriation of \$200,000 for arming and equipping the whole body of the militia, are both embodied in the Revised Statutes of the present day.

At no time subsequent to 1789, down to the period of the War of 1812, except in 1798-1800, did the military force raised by the Government exceed 5,500 men.<sup>1</sup> The direction of all purchases of, and contracts for, supplies for the military service had been vested by the law of 1798 in the Secretary of War. The business of the Indian Department, military lands, and invalid pensions; the supervision of the erection of fortifications; the erection and care of arsenals; the replenishment and distribution of warlike stores; the supervision and control of the national armories; the issue of orders relating to military posts and operations; and the correspondence growing out of these various branches, — all this pressure of business was sustained by the Secretary of War without other than clerical assistance previous to the year 1812.<sup>2</sup> In 1809, General Dearborn — “a man of vigorous mind, of extensive knowledge of detail, and of indefatigable industry” — in going out of office as Secretary of War, declared “that the business of the Department had increased beyond what the capacity of any one man could perform, and that some aid and assistance was indispensable to the public service, whoever his successor might be.”<sup>3</sup>

In 1812, after the augmentation of the army by the addition of 25,000 men had been directed, it became absolutely necessary to reorganize the War Department, so as to relieve the Secretary of War of the vast burden of details that pressed upon him.<sup>4</sup> It was accordingly proposed by the President that two additional officers be added to the War Department, to be denominated Assistant Secretaries of War.<sup>5</sup> But this proposition was opposed, on the ground that measures already passed, or then pending, would obviate the creation of these

<sup>1</sup> Am. State Pap., Mil. Aff., vol. 1, *passim*.

<sup>2</sup> Annals of Cong., 12th Cong., part 2, 1811-'12, p. 1362.

<sup>3</sup> Ibid., p.

1362. <sup>4</sup> Ibid., pp. 1362-1365.

<sup>5</sup> Jour. H. R., April 20, 1812.



additional offices.<sup>1</sup> These measures were the establishment of a Quartermaster-General's Department, a Purchasing Department, and an Ordnance Department, which, with the Medical Department, Paymaster-General, Adjutant-General, Inspector-General, &c., already provided, would diminish in a very considerable degree the labors of the Secretary of War. These several departments were accordingly established in 1812,<sup>2</sup> with a chief officer in each, and a corps of deputies and assistants as auxiliaries in the various military districts then organized.

It was made the duty of the Quartermaster-General and his deputies and assistant deputies, when thereto directed by the *Secretary of War*, to "purchase military stores, camp equipage, and other articles requisite for the troops, and generally to procure and provide means of transport for the army, its stores, artillery, and camp equipage"; and the offices of the military agents were abolished.<sup>3</sup>

It was made the duty of the Commissary-General of Purchases and his deputies, under the direction and supervision of the *Secretary of War*, to "conduct the procuring and providing of all arms, military stores, clothing, and generally all articles of supply requisite for the military service"; and the office of Purveyor of Public Supplies was abolished.<sup>4</sup>

In 1813,<sup>5</sup> the *Secretary of War* was directed by law to "define and prescribe the species, as well as the amount, of supplies to be respectively purchased by the Commissary-General's and Quartermaster-General's Department, and the respective duties and powers of the said departments respecting such purchases."

It was made the duty of the Commissary-General of Ordnance, in 1812, to direct the inspection and proving of all ordnance, cannon balls, shells, and shot; to direct the construction of all carriages, &c., for garrison and field service, and all ammunition wagons, traveling forges, &c.; also, the direction of laboratories, the inspection of powder, and the preparation of ammunition.

The law creating the Purchasing Department permitted the commanding general of the forces, the quartermaster-general, and the deputy quartermasters to direct the deputy commissaries of purchases, "in cases of necessity," to make purchases of articles needed by the troops; and the law creating the Ordnance Department directed the officers of that department

<sup>1</sup> Annals of Cong., 12th Cong., part 2, 1811-'12, pp. 1362-1365.

<sup>2</sup> 2 Stat. Large, 696, 732. <sup>3</sup> Ibid., p. 696. <sup>4</sup> Ibid., p. 696. <sup>5</sup> Ibid., p. 816.

to execute faithfully and without delay, "*in time of war*," the orders issued by the commanding officer of corps, camps, or garrisons for the supply of ordnance, ammunition, &c. In the absence of these emergent occasions, commanding officers of troops of the line had no authority over these departments, the jurisdiction of the Secretary of War being exclusive and supreme.

It will thus be seen that, in the war of 1812, the functions of the Secretary of War, in regard to purchases and contracts for military supplies of every description in the Quartermaster and Purchasing Departments, and the construction of gun-carriages, preparation of ammunition, &c., in the Ordnance Department, had come to be exercised through a new set of agencies, placed directly under his supervision and control. The officers of the army in command of troops of the line were given no further control over these departments than that specified in the laws, viz.: in cases of "necessity" to direct purchases to be made, and in time of actual "war" to command their troops to be supplied with ordnance and ordnance stores.

The act of March 3, 1813,<sup>1</sup> authorized the *Secretary of War* to "prepare general regulations, better defining and prescribing the respective duties and powers of the several officers in the Adjutant-General, Inspector-General, Quartermaster-General, and Commissary of Ordnance Departments, of the topographical engineers, of the aids of generals, and generally of the general and regimental staff, which regulations, when approved by the President of the United States, shall be respected and obeyed until altered or revoked by the same authority." This act also provided for a Physician and Surgeon-General and an Apothecary-General for the Medical Department of the army, whose respective duties were to be prescribed by the President.

Six major-generals and sixteen brigadier-generals were appointed for the war of 1812. The country was divided into nine military districts, commanded by general officers, each of whom was supplied with the proper number of staff officers.<sup>2</sup> The senior major-general commanding the main army was entitled to a private secretary; the Ordnance and other departments of supply in the various districts were subject, of course, under the existing laws, to the orders of the generals commanding during the period of the war; all or-

<sup>1</sup> 2 Stat. Large, 819.

<sup>2</sup> Am. State Pap., Mil. Aff., vol. 1, p. 385.

ders from the President relating to military operations were communicated by the Secretary of War direct to the commanding generals; and orders to subordinate officers passed from the War Department to the Adjutant-General, to be communicated by him to the general commanding the district in which such subordinate officer might be serving.<sup>1</sup>

By act of February 8, 1815,<sup>2</sup> the national armories were placed under the Ordnance Department, this department being placed by this act entirely under the supervision and control of the *Secretary of War* in all its details. Officers in command of troops of the line were, however, still authorized to draw, *in time of war*, supplies of ordnance stores, without awaiting the permission of the Secretary of War.

Two branches—the one for securing proper accountability for *public moneys* disbursed by officers, agents, and other persons for the benefit of the military establishment; the other for securing accountability for *property* in store or in the hands of troops—were established in the War Department in 1792<sup>3</sup> and 1794<sup>4</sup> respectively.

The audit and settlement of money accounts were intrusted to the accountant of the War Department, under the direction of the Secretary of War, in 1792; and, in 1794, a Superintendent of Military Stores was authorized, whose duty it was, “under the direction of the Department of War, to superintend the receiving, safe-keeping, and distribution of the military stores of the United States, and to call to account all persons to whom the same may be intrusted.” By act of March 3, 1813,<sup>5</sup> this latter office was abolished in terms and a Superintendent-General of Military Supplies was authorized, who was to reside at the seat of Government, and, under the direction of the Secretary of War, “to keep proper accounts of all the military stores and supplies of every description purchased or distributed for the use of the army of the United States, and of the volunteers and militia in their service; to prescribe the forms of all the returns and accounts of such stores and supplies purchased on hand, distributed, used, or sold, to be rendered by the Commissary-[General] of Ordnance and officers in his Department, by the Commissary-General of Purchases and his deputies, by the several officers in the Quartermaster-General’s Department, by the regimental quartermasters, by the hospital surgeons and other officers belonging to the Hospital and Medical Departments, and by all other

<sup>1</sup> Am. State Pap., Mil. Aff., vol. 1. p. 465.      <sup>2</sup> 3 Stat. Large, 303.

<sup>3</sup> 1 Stat. Large, 279.      <sup>4</sup> Ibid., 352.      <sup>5</sup> 2 Stat. Large, 816.

officers, agents, or persons who shall have received, distributed, or been intrusted with such stores and supplies as aforesaid; to call to account all such persons; to audit and settle all such accounts, and, in case of delinquency, to transmit the account, and to state the value of the articles unaccounted for by such delinquency to the accounting officers of the Treasury for final settlement and recovery of such value; to transmit all such orders, and generally to perform all such other duties respecting the general superintendence of the purchase, transportation, safe-keeping, and accountability of military supplies and stores as aforesaid, as may be prescribed by the Secretary for the War Department." All the heads of the great supply departments—the Purchasing Department, the Quartermaster's Department, the Ordnance Department, the Medical Department—and all the subordinate officers of these Departments, and all officers, agents, or persons intrusted with military stores of any description whatever, whether in store or for the regular army, or for volunteers or militia in service, were required to render quarterly returns to the Superintendent-General of Military Supplies for audit and settlement.

In the same manner, quarterly accounts of all moneys received in advance from the War Department were required to be rendered to the accountant of the War Department; and the accounts for property and for money were required by the act of 1813 to be settled by the superintendent and the accountant within three months after receipt at their respective offices.

By act of March 3, 1817,<sup>1</sup> however, the money and property branches of the War Department were both abolished, and it was enacted that after the 3d of March next "all claims and demands whatever, by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Treasury Department." To provide for this augmentation of the duties of the Treasury Department, one Comptroller and four Auditors were added to that Department. The accounts emanating from the War Department were directed to be audited by the Second and Third Auditors. It was made the duty of the Second Auditor to receive not only the "accounts relative to the pay and clothing of the army, the subsistence of officers, bounties and premiums, and the contingent expenses of the War Depart-

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<sup>1</sup> 3 Stat. Large, 366.



ment," but also the accounts relative to "military and hospital stores"; while the Third Auditor was to "receive all accounts relative to the subsistence of the army, the Quartermaster's Department, and generally all accounts of the War Department other than those provided for."\*

## THE ORGANIZATION OF THE WAR DEPARTMENT IN 1818.

After the close of the war, March 3, 1815,<sup>1</sup> an act was passed reducing the Military Establishment to a peace basis. It provided for two major-generals and four brigadiers, and such portions of artillery, infantry, and riflemen, not exceeding ten thousand men, as the President might deem proper, also the corps of engineers as then established. The two major-generals were given separate independent commands, denominated the Northern and Southern Division, respectively--the former commanded by Major-General Jacob Brown, and the latter by Major-General Andrew Jackson.<sup>2</sup>

It had been a great object of the English House of Commons for a considerable portion of the last century to fix upon the Secretary at War in that country a plain and definite parliamentary responsibility in connection with the monetary affairs of the British military service.<sup>3</sup> The ambiguity of his position in respect to the active army arose out

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\*This enlargement of the functions of the Treasury Department was made upon a joint report of the Secretaries of the several Executive Departments made to the Senate December 9, 1816, in obedience to a resolution of that body of April 20, 1816. This report recommended the abolition of the offices of Accountants for the War and Navy Departments, and also that of Superintendent-General of Military Supplies. Said they, in explanation of their plan: "Both of these Auditors [the second and third] will keep the property account connected with those branches of service in the War Department confided to them respectively." (See their report in *Annals of Congress*, 2d Session, 14th Congress, 1816-1817, pp. 23 to 30.) The Third Auditor still retains the settlement of accounts for clothing and quartermaster's stores; and the Second Auditor performed that function in respect to ordnance stores until December, 1870, when, by a departmental order of the Secretary of War, the further forwarding of property-returns of ordnance to that officer was suppressed. No change by legislation has been made in the duties of the Auditors and Comptrollers in respect to army accounts, for either money or property, since 1817. The existing provisions of the Revised Statutes are taken directly from the act of March 3, 1817. In 1877, by an amendment to section 1667, Revised Statutes, all returns of ordnance stores were required to be rendered to the Chief of Ordnance; and the Secretary of War has decided that the Chief of Ordnance, under that amendment, is authorized to audit and settle them.

<sup>1</sup> 3 Stat. Large, 224.

<sup>2</sup> Am. State Pap., Mil. Aff., vol. 1, p. 627.

<sup>3</sup> Clode's Mil. Forces of the Crown, vol. 2, p. 262.

of the form of his appointment, which, being military in character, the Commander-in-Chief of the British forces was enabled to use the words of the Secretary's commission to show his superiority over him, and to supersede the financial and parliamentary functions bestowed on the latter in control of military expenditures.<sup>1</sup> The official duties of the office of Commander-in-Chief were totally undefined, and the Duke of York, succeeding to the office in 1795, fell into the mistake of supposing, as Lord Palmerston subsequently expressed it,<sup>2</sup> that "the whole and absolute control over every part of the military service was vested in the Commander-in-Chief." The proper relationship which should exist between the Secretary at War and the Commander-in-Chief was not settled until Lord Palmerston entered upon the former office in 1809, and continued in it until 1828. As soon as he began to take a course in matters of finance in opposition to the Commander-in-Chief, a controversy, of course, at once arose, which was ultimately settled by royal warrant of May 12, 1812,<sup>3</sup> whereby the constitutional doctrine that all army expenditures should rest upon the decision of the civil minister responsible to Parliament was permanently established; for, as had been said, "to allow the army to determine the amount of its own expenditures would be to terminate all civil government."

Said the Duke of Wellington, in 1828,<sup>4</sup> in answer to a question whether the executive duties of the Commander-in-Chief and the administrative duties of the Secretary at War could not be thrown together in one office with advantage to the public service: "I should earnestly recommend that it should not be adopted; the Commander-in-Chief's office is entirely disconnected with money; the Commander-in-Chief has no power of giving an allowance to anybody, or of incurring any expense whatever. . . . Considering who the persons are who are likely to be Commanders-in-Chief of the troops in this country, I do not think it would be an economical arrangement to put the power of incurring expense into their hands, instead of keeping that power in the hands of the Secretary at War, who must answer to Parliament for every expense incurred. It is much better the Secretary at War should be the person to regulate that matter than that it should be in the hands of officers connected with the army. In former times the Secretary at War was, in fact, the Secretary of the Commander-

<sup>1</sup> Clode's *Mil. Forces of the Crown*, vol. 2, p. 264.

<sup>2</sup> *Ibid.*, p. 339.

<sup>3</sup> *Ibid.*, p. 265.

<sup>4</sup> *Ibid.*, p. 270.

in-Chief, and of course he was obliged to obey the commands of the Commander-in-Chief. Owing to different circumstances, he is no longer in that situation: he is an officer responsible himself for certain duties, and in fact he is a check on the Commander-in-Chief for the object of economy." And on another occasion he said: "The Secretary at War has a clear, simple duty to perform—he has to take care that the votes of Parliament are not exceeded, and that no expense is incurred by the Commander-in-Chief which is not necessary; in short, that no expense can be incurred without his consent."

This principle of ministerial control over military expenditures will be seen to be identical with the current of legislation and of public sentiment in our own country, from 1785 to the period of which we are hereafter to treat, when the principle received a systematic application in the reorganization of the War Department which then took place.

No sooner had the excitement attending the French difficulties of 1798 subsided than the regular army was reduced to 2,739 officers and men,<sup>1</sup> scarcely enough for protection from the Indians. Meanwhile the Government was steadily working out the construction of sea-coast fortifications, and the erection and operation of arsenals and armories. These, being works of permanent preparation and defense, were all carried on under the direction of the civil Minister of War. When the war of 1812 had arrived, requiring the placing of *men* in large numbers in the field, these preparations were availed of, but the *personnel* engaged in them were at the beginning of that war given a military character; and Congress, in its desire to rid the country of the standing army left in commission at the close of the war, came well-nigh destroying, by an act of hasty legislation,<sup>2</sup> the entire structure of administration that had been created for the purpose of affording relief to the civil office of Secretary of War. By provisionally retaining some of the branches, and inviting the attention of Congress to the matter, the whole structure was eventually restored, and within a few years thereafter a degree of efficiency in the War Office and in army administration had been attained superior to any that had existed before.

The views of the civil minister under whom this restoration took place, (Hon. John C. Calhoun,) are well worthy of insertion here; for the scheme of administration which he inaugurated has remained essentially the same to the present

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<sup>1</sup> Am. State Pap., Mil. Aff., vol. 1, p. 670.      <sup>2</sup> 3 Stat. Large, 224; Gordon's Compilation of Army Registers, 1837, pp. 51 to 60.

day. Grasping the whole doctrine of ministerial control over the military expenditures of the State, he constructed, out of the materials afforded him by the laws restoring the "Staff of the Army," a system of departmental or bureau administration which has been productive of the most beneficial results, and has received the high distinction of being since copied in other services. The system is applicable to both peace and war, and is the basis of all military efficiency coupled with ministerial control in all armies that may be raised by authority of the United States, whether regulars, volunteers, or militia. With this system the regular or standing army may be reduced or increased to any number consistent with the actual needs of the country; with it the volunteers or militia may be called into active service at any time. It is sufficiently identified with "the army" (the coercive power of the State) to preserve a proper military *esprit* in its processes of administration; it is sufficiently removed from "the army" to preserve an independent administrative control, under the supervision and direction of the civil Minister for War, over military funds, property, and industrial operations connected with the warlike preparations of the country.

The sentiment in Congress, for several years after the close of the war of 1812, for reducing the officers and troops in service to a minimum consistent with the actual requirements of the public service and the monetary depression of the times, was strong and irresistible.<sup>1</sup> The Secretary of War, (Hon. John C. Calhoun,) being called upon by the House of Representatives, in 1818, for a report on the reduction that could be made in the establishment as then organized, made an elaborate report upon the subject, in which he treated of the "staff" as follows:<sup>2</sup>

"The staff, as organized by the act of last session, combines simplicity with efficiency, and is considered to be superior to that of the periods [1802 and 1808] to which I have reference. In estimating the expenses of the army, and particularly that of the staff, the two most expensive branches of it (the Engineer and Ordnance Departments) ought not fairly to be included. Their duties are connected with the permanent preparation and defense of the country, and have so little reference to the existing military establishment, that if the army were reduced to a single regiment, no reduction could safely be made in either of them. To form a correct esti-

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<sup>1</sup> Annals of Cong., 1815 to 1820, *passim*.

<sup>2</sup> Am. State Pap., Mil. Aff., vol. 1, p. 780.



mate of the duties of the other branches of the staff, and consequently the number of officers required, we must take into consideration not only the number of troops, but what is equally essential, the number of posts and extent of country which they occupy. Were our Military Establishment reduced one-half, it is obvious that if the same posts continued to be occupied which now are, the same number of officers in the Quartermaster's, Commissary's, Paymaster's, Medical, and Adjutant and Inspector General's Departments would be required. To compare, then, as is sometimes done, our staff with those of European armies assembled in large bodies, is manifestly unfair. The act of last session, it is believed, has made all the reduction which ought to be attempted. It has rendered the staff efficient, without making it expensive. Such a staff is not only indispensable to the efficiency of the army, but is also necessary to a proper economy in its disbursements; and should an attempt be made at retrenchment, by reducing the present number, it would, in its consequences, probably prove wasteful and extravagant. In fact, *no part of our military organization requires more attention in peace than the general staff.* It is in every service invariably the last in attaining perfection; and, if neglected in *peace*, when there is leisure, it will be impossible, in the midst of the *hurry and bustle of war*, to bring it to perfection. It is in peace that it should receive a perfect organization, and that the officers should be trained to method and punctuality; so that, at the commencement of a war, instead of creating anew, nothing more should be necessary than to give to it the necessary enlargement. In THIS COUNTRY, PARTICULARLY, the staff cannot be neglected with impunity. Difficult as its operations are in actual service everywhere, it has here to encounter great and peculiar impediments, from the extent of the country, the badness and frequently the want of roads, and the sudden and unexpected calls which are often made on the militia. If it could be shown that the staff, in its present extent, was not necessary in peace, it would, with the view taken, be unwise to lop off any of its branches which would be necessary in actual service. With a defective staff, we must carry on our military operations under great disadvantages, and be exposed, particularly at the commencement of a war, to great losses, embarrassment, and disasters. \* \* \*

“It only remains to consider, in relation to this part of the resolution of the House, whether the expense of our military establishment can be reduced by a proper attention to its administration, or by a more rigid enforcement of responsibility

and economy. Our military establishment is doubtless susceptible of great improvement in its administration. The field is extensive, and the attention of the Government has not heretofore been so strongly directed towards it as its importance deserves. Here all savings are real gain, not only in a moneyed, but a moral and political point of view. An inefficient administration, without economy or responsibility, not only exhausts the public resources, but strongly tends to contaminate the moral and political principles of the officers who are charged with the disbursements of the army. To introduce, however, a high state of economy and responsibility in the management of a subject so extensive and complicated as our military establishment, is a task of great difficulty, and requires not only a perfect organization of the Department charged with it, but a continued, energetic, and judicious enforcement of the laws and regulations established for its government. The organization is the proper sphere of legislation, as the application of the laws and regulations is that of administration. The former has done all, or nearly all, that can be done.

It is believed that the organization of the War Department, as well as the general staff of the army, is not susceptible of much improvement. The act of the last session, regulating the staff, has not only made important savings in the expenses of the army, but has given both to the Department and the staff a much more efficient organization than they ever before had. Every department of the army charged with disbursements has now a proper head, who, under the laws and regulations, is responsible for its administration. The head of the Department is thus freed from detail, and has leisure to inspect and control the whole of the disbursements. Much time and reflection will be required to bring the system into complete operation, and to derive from it all the advantages which ought to be expected. The extent of the saving which may result from it can only be ascertained by time and experience; but, with an attentive and vigorous administration, it doubtless will be considerable. In war, it will be much more difficult to enforce economy and responsibility; but, with a system well organized, and with officers trained to method and punctuality, much of the waste and frauds which would otherwise take place in war will be prevented. In peace, there can be no insuperable difficulty in attaining a high degree of responsibility and economy. The more moneyed responsibility, or that of purchases and disbursements, will be easily enforced. The public now sus-

tain much greater losses in the waste and improper use of public property than in their moneyed transactions. In our military establishment, responsibility in the latter is well checked, and not badly enforced. The accounts are rendered with considerable punctuality, and are promptly settled; and even neglect or misapplication of public funds by the disbursing officers is not often accompanied with ultimate losses, as they are under bonds for the faithful discharge of their duties. Accountability, as it regards the public property, is much more difficult, and has heretofore been much less complete. Returns of property in many cases, particularly in the Medical Department, have rarely been required; and even where they have been, they have not been made with punctuality. It cannot be doubted but that the public have sustained very considerable damage from this want of accountability. Every article of public property, even the smallest, ought, if possible, to be in charge of some person who should be responsible for it. It will be difficult to attain this degree of perfection; but it is hoped, by making each of the subordinate departments of the War Department liable for the property in its charge, a very considerable improvement and reduction of expenses will be made."

Intrusted as most of the staff departments were by law with the purchase, preservation, and issue of military supplies, and each of them forming a convenient channel for administering to the wants of the "army," the several heads of these departments were called to Washington by Mr. Calhoun in 1818, with such assistants as the duties required, and were formed into bureaus or sub-departments of the War Department. This bureau organization became in time a matter of fixed determination, and in section 5 of act of July 4, 1836,<sup>1</sup> it received direct legislative recognition.

The further curtailment of the Military Establishment being, however, insisted upon by Congress in 1820, the Secretary of War (Hon. John C. Calhoun) in that year<sup>2</sup> made a further report to the House, in which he said:

"The organization of the staff in a peace establishment ought to be such that every branch of it should be completely formed, with such extension as the number of troops and posts occupied may render necessary. \* \* \*

"It is believed that the true principle of its organization is, that every distinct branch of the staff should terminate in

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<sup>1</sup> 5 Stat. Large, 117.

<sup>2</sup> Am. State Pap., Mil. Aff., vol. 2, pp. 189-192.

a chief, to be stationed, at least in peace, near the seat of Government, and to be made responsible for its condition. It is thus that the Government may at all times obtain correct knowledge of the condition of the army in every particular, and be enabled to introduce method, order, and economy in its disbursements. It is at present, with slight exceptions, thus organized, and the beneficial effects of it have already been strikingly exemplified by experience."

In 1822,<sup>1</sup> referring to this organization of his Department, he said :

"The present organization originated in the act of Congress of April 14, 1818, and has been long enough in operation to be tested by experience; and though it has not yet attained, in its operation, all of the perfection of which it is susceptible, yet it is believed that under no other system has there been greater punctuality in rendering and settlement of accounts or economy of disbursements of the Department. The Committee will have a full view of the present system and its operations by reference to the regulations of the army, a copy of which I herewith transmit. They will perceive that the regulations propose to carry a minute and rigid responsibility in every branch of military disbursements—with what success a reference to the expenditures under their operation will best illustrate. The Committee will perceive, by referring to the regulations, that one principle pervades the whole organization—to hold the head of each subordinate department responsible for the disbursements of his department. All advances are made on his recommendation, founded on precise estimates; and *all accounts are rendered to him, and, before they are audited, are minutely examined by him and approved.* It is thus that responsibility is extended to every item of disbursements, and regularity and economy introduced."

That this arrangement met with the full concurrence and approbation of the President—the supreme Civil Magistrate and Commander-in-Chief of the army—let the following extract from his annual message of December 3, 1822, attest :

"With the organization of the staff there is equal cause to be satisfied. By the concentration of every branch with its chief in this city, in the presence of the Department, and with a grade in the chief military station to keep alive and cherish a military spirit, the greatest promptitude in the exe-

<sup>1</sup> Am. State Pap., Mil. Aff., vol. 2, p. 345.



cution of orders, with the greatest economy and efficiency, are secured."

Regular annual appropriations are made for the maintenance of an organized clerical force in the office of each of these chiefs of bureaus, and this force is placed, in all respects as to grade, and pay, and tenure of office, upon the same footing as the clerical forces in the other great Executive Departments at Washington.<sup>1</sup>

The army regulations adopted about this period bore out, to the minutest details, the theory of organization here set forth.<sup>2</sup> The supervisory jurisdiction and executive control of the Secretary of War over certain affairs of the staff corps and departments, through the chiefs stationed in Washington, and to the exclusion of officers in command of troops of the line, were fully amplified and explained. The matter of relative military rank between staff and combatant officers was also settled and adjusted by these regulations, which, as a whole, formed a harmonious compend for the systematic and orderly government of the Military Establishment, having respect to that feature for which the House of Commons in England had so long striven—viz.: ministerial supervision and control. This control, when traced out to its ultimate applications in our service, will be found to pervade the whole "MILITARY ESTABLISHMENT" of the nation; and by this term, as herein used, is meant the whole organized Executive Department of Government, charged in general and in detail, with the development of the war power of the country, and the maintenance, government, support, and direction, for the purposes of government, of the combatant body of men denominated the army, (whether regulars, volunteers, or militia,) and of the permanent works, operations, and business in connection therewith. The term thus defined includes at the present day, in *matériel and personnel*, the following:

1. The fortifications of the country, those in process of construction as well as those in the completed state, (the latter are turned over to the custody of the army proper,) torpedo defenses, and works of river and harbor improvements, surveys, &c.

2. The arsenals for the storage, construction, and repair of arms and munitions of war, their appendant magazines, the national armory,—at each of which places military stores are

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<sup>1</sup> Rev. Stat., title IV, pp. 25, 30; title VI, pp. 34, 36.

<sup>2</sup> Army Regulations, 1825 and 1835-'36.

provided in bulk to meet the current wants of the service, and preserved to meet the contingency of war.

3. The permanent depôts for the purchase, storage, and distribution of clothing, camp and garrison equipage, means of transportation, forage, &c.

4. The permanent depôts for the purchase and distribution of provisions to the army.

5. The permanent hospital accommodations and medical stores in connection therewith.

6. The signal service, and the stores in connection therewith.

7. A repository in the War Department of the records of the *personnel* of the entire Military Establishment, superintendent of recruiting, and an organ for the promulgation of the military orders of the President and Secretary of War, and of the senior general of the army when assigned to duty as "commanding the army."

8. A repository in the War Department of all records of military trials.

#### 9. The Military Academy.

The most of these branches of the Military Establishment are objects of large appropriations of money by Congress, and each is supplied with a special *personnel* of officers, or officers and enlisted men, upon whom the discipline of the military is imposed in aid of a proper administration. The Military Academy is supplied in part by details of officers from the army and the staff departments. In some of these branches large forces of civilian experts, mechanics, artisans, and laborers are engaged, and large contracts entered into, and other mercantile transactions had, with the non-military world, constituting a train of ordinary duties not entirely of a military character, to which the term *civico-military* has been applied. In some of them the duties require high scientific and professional attainments, necessitating a life-long devotion to special pursuits. Excluding the Military Academy, these several branches are conventionally termed "staff corps," "bureaus," or "departments," and are enumerated as follows: 1st, Engineer's; 2d, Ordnance; 3d, Quartermaster's; 4th, Subsistence; 5th, Medical; 6th, Signal Service; 7th, Military Justice. To these may also be added the Adjutant-General and the Inspectors-General of the army, who are stationed in the War Department as adjuncts to the Secretary of War and staff officers of the commanding general.

In a pure democracy, such as ours, where the innate aggressiveness of standing armies affords a well-grounded

prejudice against them in the minds of the people, and where (the Government being erected "*by* the people and *for* the people") each able-bodied citizen is of and within himself a potential soldier for the defense of the State, it is obvious that some governmental organization, such as these staff corps and departments afford, must constitute the sub-structure upon which our military efficiency as a nation must depend. With a view to a ready development of national strength when occasion may require, the maintenance of most of these corps and departments during peace is essential, whether we have a single soldier in the field at any given time or not. It is through their labors in peace, and activity in war, that the efficiency of our citizen-soldiery, or raw combatants, must largely depend. Were the object of popular jealousy (the armed body of men denominated "*the army*") to be entirely disbanded, the necessity for maintaining these permanent works, manufactories, and depositories, with their appropriate retinues of officers and men for their care, preservation, and operation, and of officers needful for preserving the intricate knowledge of military administration, would still remain. This much, at least, of warlike preparation must be maintained to aid in suppression of casual domestic contentions at home, and to preserve us from domination from abroad. Relying as we must, and always have, upon the volunteers and militia as our chief defense, an army called into the field without the aid which these preparations afford, would be sadly lacking in the most vital elements of military efficiency. No army, either regular, volunteer, or militia, can exist in the same degree of vigor without them; but *they* can exist, with perfect safety to the liberties of the people, and with advantage to them, without a single armed soldier in the field. In their organized official capacities, they are permanent governmental institutions, of which all armies raised are the beneficiaries.

10. The army, therefore, (or armies,) is the element which completes the Military Establishment, and which, together with the navy, forms the immediate and active coercive power of the State. Webster's Dictionary defines an army to be "a collection or body of men armed for war, and organized into companies, battalions, regiments, brigades, and divisions, under proper officers." Halleck (*Elements of the Military*, p. 235) says: "By the law of the 12th of December, 1790, on the organization of the public force of France, the army was defined, 'a standing force drawn from the public force, and designed to act against external ene-

mies.' (*Une force habituelle extraite de la force publique, et destinée essentiellement à agir contre les ennemis du dehors.*) In time of peace, the whole organized military force of the State is intended, when we speak of the *army*; but, in time of war, this force is broken up into two or more fractions, each of which is called an army."

With us a minimum military force is always kept on foot in time of peace, and this "collection, or body of men," or "standing force," is called the Regular Army in contradistinction to the volunteers and militia, the latter of whom, by our great charter of liberty, are proclaimed to be "necessary to the security of a free State." It is for the benefit of these latter, therefore, as well as the former, that all warlike preparations by the Government should be made.

Composed of general officers and aides, regimental officers, company officers, non-commissioned officers, and men, armed and equipped under the three principal arms of artillery, cavalry, and infantry, our "armies" are at all times possessed of the completed fortifications, and are assisted by officers and men of the staff corps and departments detailed by the Secretary of War for duty with them, provided in all needful cases, by his direction, with public funds and property to be expended under the directions of the commanding generals according as the exigencies of the particular military operations, sanctioned by the Government, may require.

The wisdom of our British ancestors is written in our Constitution, wherein it is prescribed to Congress that no appropriation to the use of the army shall be made for a longer term than two years; and the Congress has provided that moneys to this use shall be drawn from the Treasury (not by the commanding officer of the troops, but) by a great civil officer of State, who, standing between the army and other portions of the Military Establishment and the public Treasury, is the "constitutional organ of the President for the administration of the Military Establishment of the nation,"<sup>1</sup> and as such is the guardian of the civil Government against unlawful encroachments of the military power. Through the bureaus of his Department strict accountability is rendered to the great civil Department of the Treasury for the funds disbursed under his direction or by his approval. Representing the supreme Civil Magistrate, he is no part of the army and has no duties to perform in the field. At the head of his Department, he is amenable to no mili-

<sup>1</sup> *U. S. vs. Eliason*, 16 Peters, 291, and *Wilcox vs. Jackson*, 13 Peters, 498.



tary jurisdiction whatever, and no military man is his official peer. He cannot submit to be overborne by military personages in any contest for the exercise of prerogatives lawfully inhering in his office. He is answerable to the President and the law for the faithful discharge of the trusts reposed in his hands.

The staff corps, bureaus, and departments having become permanent organized agencies, under the control of the Secretary of War, for the administration of certain matters pertaining to the military affairs of the nation, their duties may be classified under two designations, viz.: "sedentary duties" and "active military duties."

The sedentary duties are performed within the limits and special jurisdictions of the bureaus, corps, and departments themselves, and are by the creative laws under the direction and control of the Secretary of War. The official *personnel* of these several branches, being made subject to military law and discipline, invested with military rank, and made liable to perform duty under the commanding officers of the combatant forces, are called portions of the *army*. But military rank and titles were not at first conferred on all these branches, and were only finally conferred in order to promote military respect appropriate to the importance of the duties performed when the officers of these branches were thrown in intimate personal and official relationship with the officers of the active army proper. The rank thus given, however, is of a limited kind, the officers of the Pay and Medical Departments being rendered totally ineligible to command outside of their respective departments, and the officers of the other branches are eligible to the command of officers and troops of the line of the army only upon special assignment by the President for the purpose. As the officers of these branches are by law permitted no inherent right to command officers and troops of the combatant army by reason of their military commissions, so the combatant officers of the army, in respect to the sedentary duties of these branches, which are under the direction of the Secretary of War exclusively, are equally excluded from intrusion by way of command, except only as permitted by law in time of war or of pressing military emergency.

These sedentary duties, aside from their scientific or professional character, constitute the organized administrative system for the planning and erection of fortifications which the army is to man and defend; for the collection and preservation of exact historical records, &c., of the Military Establish-

ment; for the procurement, manufacture, preservation and distribution of the vast quantities of warlike materials destined for the use of the army or armies of the nation; and for the application of the enormous sums appropriated by Congress for the support of the Military Establishment in all its branches of service. Congress appropriates specifically for the items which make up these enormous amounts, and directs the moneys to be drawn from the Treasury by requisitions of the Secretary of War, to be expended under his direction, he being the actual responsible officer to the law and to the country for the proper administration of the affairs of the Military Establishment. For examples of duties of this sedentary character, those of the Chief of Engineers, and all other engineer officers who are not detached from their ordinary duties and assigned to the active army proper, may be referred to; so those of the Chief of Ordnance and officers of the Ordnance Department not assigned as above; so those of the Quartermaster-General and assistants in his office, and the Deputy Quartermasters-General in charge of permanent depôts of quartermaster's supplies where purchases are made in bulk, by direction of the Secretary of War, for storage as reserve supplies, or for distribution to subordinate depôts with the army, &c.; so those of the Commissary-General of Subsistence, and officers of the Subsistence Department not assigned to the army proper; so those of the Surgeon-General and officers of the Medical Department not so assigned; so those of the Paymaster-General, &c.; the Chief Signal Officer; the Judge Advocate-General; and the Inspectors-General and Adjutant-General, when acting in connection with the office of the Secretary of War.

The "active military duties" are performed when the officers of these branches are detached by the Secretary of War from their sedentary duties, and assigned to duty with any troops under the command of combatant officers of the army. They are usually assigned to duty on the staffs of general officers, and to the discharge of other appropriate active duty with the army proper, where their complete knowledge of administration in their respective branches (in channels leading up through the chiefs of their branches to the Secretary of War) renders them invaluable as adjuncts to the active military forces. For examples of duties of this character, those of the officers of the several branches who are doing duty under the command of combatant officers of the army may be referred to. When thus assigned they are *de facto* and *de jure* subject to the entire jurisdiction of the army officer

commanding them, to the full extent to which the laws, regulations, and customs of service may give authority in the premises.

The *personnel* of most of these subordinate branches is made up by transfers from the active army in the lower grades, and by subsequent promotions in regular gradation as vacancies occur.

It will hence be seen that by the system thus established the active army has been always supplied with competent staff officers, and the Secretary of War has been aided in the sedentary duties of the several branches by corps of professional and scientific experts in all matters relating to the national defense and the wants of the living army, and who, having restricted rank and being subject to the rigors of military law, are spread as a net-work over the country, as accountants and professional ministerial officers, having direct communication with, and rendering accountability to, him through the chiefs of the several bureaus of the War Department. The military funds and property are thus kept within the control of the civil Government at Washington, to be applied or transferred from one section of the country to the other, as the exigencies of the services may require. In the cases of officers of those branches not intrusted with funds or property, the lines of communication from the army to the Secretary of War are kept up through the chiefs of those branches respectively, in order that the War Department, as the great civil executive Department for War, may be made and retained as the repository of the archives of every branch of the "*Military Establishment*," whereby the details of administration in respect to both *personnel* and *matériel* may be kept continually under the eye of Government at the capital of the nation, not only for purposes of surveillance, but for historical evidence for use in all other branches of the Government—legislative, executive, and judicial.

## HISTORY OF THE COMMAND OF THE ARMY SINCE 1821.

In reducing the army, in 1821, Congress fixed the number of general officers at one major-general and two brigadiers.<sup>1</sup> The Secretary of War had already assembled around him as assistants the chiefs of the several bureaus, corps, and departments,<sup>2</sup> and in making his report to Congress in 1822,<sup>3</sup>

<sup>1</sup> 3 Stat. Large, 615.

<sup>2</sup> Am. State Pap., Mil. Aff., vol. 2, p. 297, 420.

<sup>3</sup> Ibid., p. 450.

(which, it may be stated in passing, was the first of the series of *annual* reports that have been made by the Secretaries of War since that year,) he states that in order to render the organization of the Military Establishment more complete he had stationed the major-general at the seat of Government, "thus bringing the *military* administration of the army, as well as its pecuniary through the several subordinate branches, under the immediate inspection and control of the Government." The major-general in this and subsequent years made his report directly to the Secretary of War, as did the Chief of Engineers, the Colonel on Ordnance duty, the Quartermaster-General, the Paymaster-General, the Surgeon-General, the Commissaries-General of Provisions and Purchases, who are denominated by the Secretary of War, in the above report, "subordinate branches." The "subordinate branches" then existing, and all similar ones since created, have invariably (except in 1869, a period hereinafter to be referred to) made their annual reports of operations and finance direct to the Secretary of War, under whom their operations are conducted, and not to or through the general officer assigned to the command of the army.

A vacancy by death having occurred in the office of major-general in February, 1828, the Military Committee of the Senate inquired into the expediency of abolishing the grade of major-general altogether from our service; but the Committee came to the conclusion that a general commanding was necessary as a "medium of communication between the Government and the army," and that, if the office were abolished, the functions of a general in command would remain to be in some manner performed; that if the Secretary of War was not by education a military person he would be without the requisite technical knowledge for the purpose, and hence would be controlled by the staff officers by which he was surrounded.<sup>1</sup> The Secretary of War (Hon. P. B. Porter) expressed his views on the subject at the time as follows:<sup>2</sup>

"My opinion, therefore, is that there should be at the head of the army of the United States—whether its numbers continue as at present, or whether they be enlarged or diminished—an individual higher in rank than any other officer, and who should have the immediate command of the whole; that he should be stationed, in times of peace at least, at the

<sup>1</sup> State Pap., Senate, 1st Sess., 20th Cong., vol. 4, doc. 144.

<sup>2</sup> State Pap., H. R., 2d Sess., 20th Cong., vol. 3, doc. 119.



seat of Government, where he can most readily receive the advice and orders of the President, and where he can hold the most direct and expeditious communication with every part of his command.

“The present organization being in conformity with the preceding views, it will readily be perceived that my opinion is against the expediency of abolishing the office of major-general. If it be said that the office of major-general being abolished, the army will then have a head in the President, or the Secretary of War, by whom his military functions are discharged, the answer is that the Department of War does not form an integral part of the military machine. The numerous civil avocations of the Secretary of War would put it wholly out of his power to attend to the daily orders and routine of duties which appertain to the command and discipline of an army; and the effect of a similar abolition of the office of major-general would, in the present state of the army, be to divide it into two separate, independent, and probably conflicting commands, under the two brigadiers; unless they should be connected through the instrumentality of the Adjutant-General, or some other subordinate officer stationed at the seat of Government, under the Secretary of War, and who would in fact perform the appropriate duty of the chief of the army.”

For these reasons, therefore, the committee recommended the retention of the grade; and the command of the army, in the jurisdiction thus marked out, was accordingly exercised by an officer in the grade of major-general until the year 1864, when the full grade of lieutenant-general<sup>1</sup> was revived, and in 1866<sup>2</sup> that of general, as we shall hereafter see. The brevet rank of lieutenant-general had been conferred on General Scott, the major-general, in 1855,<sup>3</sup> and he exercised the command in this brevet grade until November, 1861.<sup>4</sup> From this last date to 1864 the command was exercised by such major-generals as the President selected for the purpose.

General Scott in 1821,<sup>5</sup> and afterwards in 1825, framed a system of regulations for the government of the army, in which no definitions of the duties of a general commanding the army were attempted. The major-general was called to

<sup>1</sup> 13 Stat. Large, 11.      <sup>2</sup> 14 Stat. Large, 333.      <sup>3</sup> 10 Stat. Large, 723.

<sup>4</sup> G. O. No. 94, A. G. O., 1861.

<sup>5</sup> Am. State Pap., Mil. Aff., vol. 2, p. 199.

Washington in 1821, as we have seen, in order that the military administration of the army might be brought under the inspection of the Secretary of War; and in 1828 it was determined to continue the grade of major-general, there being then two brigadier-generals in service. General Scott, in this latter year, laid some claim to recognition as the senior general officer of the army, and writing to the Secretary of War on the subject, August 21, 1828, says:<sup>1</sup>

"I do not claim the command of the army (under the President) as *positive* right. The acts of Congress in force do not create the office of 'Commander-in-Chief,' 'General-in-Chief,' or 'Commander of the Army.' The first and third offices existed in the revolutionary war and in 1798-'99 respectively, and were both filled by the same individual—the Father of his Country. The existing laws do not even require that the senior general should be called to Washington to *act* as commander of the army, &c., under the President. So before 1808, when we had but one general officer, (Brig. Wilkinson,) he was not, but for a short period, charged with the immediate command of the army, but generally commanded a particular department or district, whilst other departments or districts were placed under colonels. In 1808 two other brigadiers (Hampton and Gansevoort) were added to the establishment, and each of the three charged with separate geographical commands. The same arrangement prevailed throughout the late war, and again on the peace establishment, down to 1821. During all these periods the President held the immediate command of the army (through the War Department) in his own hands. In 1821, for the first time since the death of General Washington, the senior general (Brown) was charged with the command of the entire army, and called to Washington. It is, therefore, perfectly competent to the President to resume the immediate command of the army, through the War Department or otherwise, and to assign the several general officers of the line to separate geographical commands. All that I contend for, then, is this: if either of these generals be charged with the entire command of the army under the President, it must be the senior general on duty, which senior I am," &c.

In September, 1835, an edition of Army Regulations was issued from the War Department, which was amended and

<sup>1</sup> Fry's Brevets, p. 105.

promulgated December 31, 1836, in which the following article occurred:

“ARTICLE XXXIX.—THE COMMANDER OF THE ARMY.

“1. The Military Establishment is placed under the orders of the major-general commanding-in-chief in all that regards its discipline and military control. Its fiscal arrangements properly belong to the administrative departments of the staff and to the Treasury Department, under the direction of the Secretary of War. While the General-in-Chief will not interfere with the concerns of the Treasury, he will see that the estimates for the military service<sup>1</sup> are based upon proper data, and made for the objects contemplated by law, and necessary to the due support and useful employment of the army. The general will watch over the economy of the service in all that relates to the expenditures of money, supply of arms, ordnance and ordnance stores, clothing, equipments, camp equipage, medical and hospital stores, barracks, quarters, transportation, fortifications, military academy, pay and subsistence; in short, everything which enters into the expenses of the Military Establishment, whether *personal* or *material*.<sup>2</sup> In carrying into effect these important duties, he will call to his council and assistance the staff<sup>3</sup> and those officers proper, in his opinion, to be employed in verifying and inspecting all the objects which may require attention. The rules and regulations established for the government of the army and the laws relating to the Military Establishment, are the guides for the commanding general in the performance of his duties.”

In this same edition, the functions of the several branches of the staff are thus comprehensively stated:

*Adjutant-General.*—“The Adjutant-General is the channel through which are issued all orders emanating from the headquarters of the army, and all regulations necessary to be communicated to the troops. He is charged with the details of the service, with the records of all military appointments,

<sup>1</sup> Meaning the estimates on the War Department for supplying the local wants of the various portions of the combatant forces under the command of the general.

<sup>2</sup> Meaning a surveillance over the moneys and materials supplied by the War Department for application to the local wants of the various portions of the combatant forces under the command of the general.

<sup>3</sup> Meaning the officers of the staff departments assigned to duty with the combatant forces under the command of the general.

promotions, resignations, deaths, and other casualties, as well as the inventories of the effects of deceased officers and soldiers; with the registry, making out and distribution of all commissions of the army; \* \* \* with the safe-keeping of the monthly returns of regiments and posts and muster-rolls of companies; the annual returns of the militia; \* \* \* the records of the War Department which relate to the *personnel* of the army; with the duties connected with the recruiting service, and the enrollment of all enlisted soldiers," &c. \* \*

*Inspector's Department.*—"It is through this Department that the Secretary of War and the commanding general are to be made acquainted with the actual state and condition of the army, and more especially the character and efficiency of the officers." \* \* \*

*Quartermaster's Department.*—"The Quartermaster-General is stationed at the city of Washington, and, under the direction of the Secretary of War, is charged with the military and administrative details of his Department. He has a complete administrative control of all the officers belonging to his Department, as well as those appointed to act therein or make disbursements on account thereof. \* \* \* The objects of this Department are to insure an efficient system of supply, and to give facility and effect to the movements and operations of the army," &c. \* \* \*

*Engineer Department.*—"The Chief of the Corps of Engineers shall be stationed at the seat of Government, and shall be charged with the general superintendence of the Engineer Department. He shall regulate the duties of the officers of the corps of engineers, and of all other officers and agents who may be employed in the Department; and he shall, under the direction of the Secretary of War, have the control of such officers and agents in everything relating to their duties in the Department, and to the disbursement of the funds placed in their hands in the performance of those duties. He shall personally inspect the public works of the Engineer Department at such times as he may think necessary. \* \* \* The order of the Secretary of War relative to the Military Academy will be communicated through him. \* \* \* A permanent superintendent of the academy, appointed from the corps of engineers, will have the immediate government of the institution, and be held responsible for its correct management. \* \* \* No officer of the army, of any rank whatever, except the commandant of the corps of engineers, shall exercise command in the Military Academy, unless subordinate to the superintendent." \* \* \*



*Ordnance Department.*—"The senior officer of the Ordnance Department is, under the direction of the Secretary of War, charged with its superintendence and administration. He will be stationed at the seat of Government. \* \* \* There shall be established, under the direction of the Secretary of War, as many arsenals of construction as the public service may require, &c. \* \* \* Arsenals of construction shall be under the immediate command and direction of officers of the Ordnance Department." \* \* \*

*Subsistence Department.*—"The Commissary-General of Subsistence is stationed at the city of Washington, and has, under the direction of the Secretary of War, the general superintendence of the Subsistence Department," &c. \* \* \*

*Pay Department.*—"The Paymaster-General is stationed at the seat of Government, and, under the direction of the Secretary of War, is charged with the administration of the affairs of his Department and the control of the officers connected therewith," &c.

*Medical Department.*—"The Surgeon-General is stationed at the city of Washington, and is, under the direction of the Secretary of War, charged with the superintendence and administration of the Medical Department." \* \* \*

*Purchasing Department.*—"The Commissary-General of Purchases will, under the direction of the Secretary of War, purchase all clothing, dragoon saddles and bridles, tents, tent-poles, camp kettles, mess-pans, bed-sacks," &c.<sup>1</sup> \* \* \*

*Clothing Bureau.*—"The officer at the head of the Clothing Bureau is charged with the correspondence of the War Department upon all subjects connected with the clothing of the army."<sup>2</sup> \* \* \*

Under the head of "The Staff of the Army," the duties of the subordinate officers of the staff corps, bureaus, and departments are thus stated in these Regulations:

"These officers act in the name of the commanders *under whom they are placed*, or perform their functions according to the rules and regulations established for the government of their *respective Departments*."

In the edition of the General Regulations promulgated January 25, 1841, the article in regard to the commander of

<sup>1</sup> These duties were subsequently merged in those of the Q.-M. and Ordnance Departments.

<sup>2</sup> Subsequently turned over to the Q.-M. Department.

the army was slightly but not essentially modified, and was in the following words:

“ARTICLE X.—THE COMMANDER OF THE ARMY.

“48. The Military Establishment is placed under the orders of the major-general commanding-in-chief in all that regards its discipline and military control. Its fiscal arrangements properly belong to the administrative departments of the staff, and to the Treasury Department, under the direction of the Secretary of War.

“49. The General will watch over the economy of the service in all that relates to the expenditure of money, supply of arms, ordnance and ordnance stores, clothing, equipments, camp equipage, medical and hospital stores, barracks, quarters, transportation, fortifications, military academy, pay and subsistence; in short, everything which enters into the expenses of the Military Establishment, whether *personal* or *national*. He will also see that the estimates for the military service are based upon proper data, and made for the objects contemplated by law and necessary to the due support and useful employment of the army. In carrying into effect these important duties, he will call to his counsel and assistance the staff and those officers proper, in his opinion, to be employed in verifying and inspecting all the objects which may require attention. The rules and regulations established for the government of the army, and the laws relating to the Military Establishment, are the guides to the commanding general in the performance of his duties.”<sup>1</sup>

The functions and duties of the officers of the staff corps, bureaus, and departments were reiterated in this edition of the Regulations, substantially the same as in the preceding one. In the edition promulgated May 1, 1847, Article X was repeated exactly as in the one of 1841, and the functions and duties of the subordinate branches were continued as in the latter edition.

It might appear to those having independent notions of military organization and administration, derived from viewing the Military Establishment (in the wide sense hereinbefore explained) from a standpoint wherein the power and prestige of the military, *as military* alone, and without any reference whatever to the claims of *civil Government*, are considered, that the whole Establishment should, upon purely military principles, be placed under the orders of a military

<sup>1</sup> See foot-note, p. 70.

officer commanding-in-chief; that, in fine, besides handing over to this chieftain for discipline and control the armed body denominated the army or armies, all other governmental provisions or contributive systems, having for their objects the furnishing to the army or armies the means necessary for subsistence, comfort, mobility and action, should in their entirety be placed permanently under his command and control. Doubtless, in the mind of the military enthusiast this theory is the correct one. But the military being the creature of the civil power, it is axiomatically true under our form of Government that the former must be subordinate to and dependent upon the latter so long as the last vestige of lawful civil Government remains capable of civil administration and protection. In the expiring throes of civil Government the military is, it is true, exalted to a supreme preëminence by consent of both Government and people; but these are extraordinary and exceptional occasions, and the prerogatives which inure to the military under such circumstances are curtailed and reduced upon the return of civil power. How far these prerogatives shall remain, consistent with the genius of civil liberty after civil Government has been enthroned, has wisely been vested by our Constitution in the determination of Congress, who by it is made the creator, preserver, and benefactor of all armies. And so we find Congress, the direct representatives and agents of the whole body of the people in their sovereign civil capacity, empowered to "raise and support" armies; to "declare war;" to "make regulations for the government of the land and naval forces"; and to make "provision for the common defense." Congress makes provision for the common defense and for the support of armies through such agencies and instrumentalities as it in its wisdom deems fit, without regard to any abstract "military principles," which are not binding upon it,—it rather makes principles as it proceeds and "bends the neck of military power under the yoke of law."

Overlooking the policy of civil Government and the supremacy of the legislative will, it might at first view appear to the military theorist that the articles relating to "the commander of the army," heretofore quoted, placed the entire Military Establishment, in its wide sense, under the orders of the senior general-officer of the army. It is not known that, practically, these articles were ever given such an interpretation. At no period of General Scott's incumbency was he known to have raised the pretension that upon "fundamental military principles," or by reason of these articles, he should

be made a supreme military functionary in the War Department, with jurisdiction coextensive with every branch of the entire Military Establishment, or concurrent with that of the Secretary of War. While the articles were retained in the Regulations, their generalities might possibly have afforded color to the general officer for extending his military jurisdiction whenever a weak administration, or one over-zealous in the interest of the military, should by inadvertence or design yield to the pretensions that might have been founded solely upon them; and it would not have been surprising to find that when such unsettled notions of the organization of the War Department had come for a time to prevail, they would have been subsequently righted by vigorous orders issued in vindication of the lawful prerogatives of the Secretary's office. But the statute laws (still in force at the present day) on which these Regulations were founded were so explicit in regard to the jurisdiction of the Secretary of War over what has herein been characterized as sedentary duties, that the senior general officer never was moved by military or other principles to question it. At both periods of succession in the office of major-general, (1828 and 1841.) questions of precedence arising out of seniority of brevet commissions afforded an all-absorbing topic of discussion between the fortunate major-general and the less fortunate but aspiring brigadiers.<sup>1</sup> To such an extent was this discussion carried after General Scott's accession to the major-generalcy and assignment to the command of the army, that the House Military Committee in 1842 inquired into the expediency of abolishing altogether the office of major-general. On this subject the then Secretary of War wrote as follows,<sup>2</sup> after quoting from the report of his predecessor in 1828, hereinbefore referred to:

"These views are adopted, and fully and entirely concurred in by me. Their soundness and accuracy, it is believed, will commend them to the favorable consideration of all. A few of the topics suggested by General Porter [the previous Secretary] are susceptible of some modification, although probably without much addition to their strength. The civil avocations of the Secretary of War, which fourteen years ago he stated to be so numerous 'as to put it wholly out of his power to attend to the daily orders and complicated routine of duties which appertain to the command and discipline

<sup>1</sup> Fry's Brevets, pp. 103, *et seq.*; 127, *et seq.*

<sup>2</sup> Fry's Brevets, p. 130.



of an army,' so far from diminishing since that period, have been augmented and multiplied to an extent that renders the argument perfectly conclusive.

"The functions of a Secretary of War are of a civil, and not of a military character, and are administrative rather than executive. His business is more to superintend the general arrangements of the service, regulate its expenditures, and enforce responsibility than to exercise command. It can rarely happen that he possesses an acquaintance with the details of service, or experience in the art of war. By associating with him, at the seat of Government, an officer of rank having these qualifications, the system is rendered complete, and the various talent requisite to the faithful and successful administration of the concerns of the army may be brought into operation.

"To devolve the peculiar duties of a commanding general upon an adjutant-general would be making him, in fact, the commanding general. All that would be gained would be a change of title, and instead of a major-general commanding the army an adjutant-general would do so. The nature of the duties of the office of adjutant-general is wholly different from those of a commander. He is, in fact, the adjutant of the commander; and we might as well abolish the office of colonel of a regiment, and place its adjutant in command of the lieutenant-colonel and major, as to place the adjutant-general, whose official rank is that of colonel, in command of brigadiers.

"After the expression of these views it is scarcely necessary to add that, in the opinion of this Department, it is impracticable, consistently with the existence of our army, to dispense with the performance of the duties appertaining to a commanding general-in-chief."

Neither this Secretary nor any of his predecessors ever counselled or agreed to the interposition of the senior general officer between himself and the staff corps and bureaus of his Department. Communications from the Secretary of War and them were always direct, on matters within their respective provinces; and orders and directions affecting them collectively, or of which the army at large were to take notice, were issued through the office of the Adjutant-General. On November 21, 1842,<sup>1</sup> the Adjutant-General promulgated the following order of the Secretary:

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<sup>1</sup> G. O., Nov. 21, 1842, A. G. O.

"The movements of officers subject to the orders of the chiefs of the different bureaus are so connected with the general administration of the Department as to render it advisable that the practice of consulting the Secretary of War, which now prevails in most cases, should exist in all. Whenever, therefore, the officer in charge of any bureau deems a change desirable in the station or duties of any officer subject to his orders, he will report the same in writing, with a brief statement of the reasons for such change, to the Secretary of War, by whom the proper directions will be given."

In March, 1843,<sup>1</sup> the Secretary of War extended the provisions of paragraph 140 of the Regulations (in regard to taking and granting leaves of absence in the army) to the "heads of bureaus in the War Department and the officers under their charge," and directed that applications by such officers for leaves, for periods exceeding that specified in paragraph 140, should be addressed to the Secretary of War through the chiefs of bureaus to which the officers might belong.

In April, 1843,<sup>2</sup> the Secretary of War laid down, among others, the following rules, to "govern in all cases, except where a deviation may, under special circumstances, be found necessary, when directions for the purpose will be given by the War Department: 1st. *Arsenals*, being under the control of the Ordnance Department, will not be interfered with by any other branch of the service. 2d. *New works* (fortifications) in process of construction under the direction of the Chief of Engineers will, in like manner, be under the control of the Engineer Corps, without interference."

In December, 1847,<sup>3</sup> an order was published, announcing that the subordinate officers of the Pay Department were "subject only to the orders of the Secretary of War and the Paymaster-General, except that they are liable to arrest by the senior officer of the department or command to which they are arranged for the regular payment of the troops."

From 1821 to 1842 the country had been divided into two geographical divisions, each commanded by a brigadier-general, the major-general commanding-in-chief being stationed at Washington.<sup>4</sup> These two divisions were discontinued in 1842,<sup>5</sup> and the United States were redistricted, for

<sup>1</sup> G. O., March 4, 1843, A. G. O.      <sup>2</sup> G. O., April 8, 1843, A. G. O.

<sup>3</sup> G. O., Dec. 31, 1847, A. G. O.      <sup>4</sup> See Army Registers.

<sup>5</sup> G. O. No. 17, A. G. O., April 20, 1842.

the purpose of securing more direct channels of communication with the troops, into nine military departments, under the brigadiers and colonels in the service, the major-general being retained in Washington. This disposition continued until the period of the Mexican war, during which the major-general commanding-in-chief, together with other major-generals temporarily appointed for the war, was absent with the army in Mexico. Upon his return, in 1848,<sup>1</sup> an order was issued from the War Department reëstablishing the two geographical divisions, the command of the Eastern being given to General Scott, the senior major-general, with head-quarters at New York, and that of the Western to Major-General Zachary Taylor, with head-quarters at or near New Orleans. These two commands were independent of each other, and were made so out of deference to General Taylor, who at the time was before the people as a candidate for the Presidency, and who might, therefore, in the possibility of events, become General Scott's official superior. General Taylor was elected to the Presidency, and inaugurated March 4, 1849. On May 10,<sup>2</sup> following, he caused an order to be issued through the War Department, directing Major-General Scott to "assume the command of the army, and the duties in all that regards its discipline and military control, according to the regulations prescribed for the guidance of the general commanding-in-chief." This order, it will be observed, assigned the major-general to the command of the "army," and did not place the entire Military Establishment under his orders.

Throughout all these changes in the command of the army the "subordinate branches" of the War Department remained undisturbed—the "sedentary duties" were under the exclusive control and supervision of the Secretary of War, while the "active military duties" were performed in and with the army under commanders to whom the officers of these branches were assigned. In 1851<sup>3</sup> the Secretary of War in orders called attention to the enormous expenditures in the army recently brought to his notice, and stated, for the information of all concerned, that "the commanders on the frontiers should understand that officers of the staff are assigned to duty as their *assistants*—that it is the duty of all commanding officers to watch over the public expenditures in every branch of the service within their *commands*, and that for all excesses such commanders are held responsible."

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<sup>1</sup> G. O. No. 49, A. G. O., Aug. 31, 1848.

<sup>2</sup> G. O., May 10, 1849, A. G. O.    <sup>3</sup> G. O., A. G. O., 1851.

This was the widest construction ever given by the Secretary of War to that portion of Article X which required the general to watch over the economy of the service in "everything which enters into the expenses of the Military Establishment, whether personal or national"; and, as will be observed, this order referred only to expenditures made by staff officers assigned to duty, (with public funds for immediate use,) with commanding officers of the army on the frontiers and elsewhere.

In the political campaign of 1852, General Scott was a candidate for the Presidency, and was defeated. On March 31, 1853, after the inauguration of Franklin Pierce, his competitor, and the appointment of Jefferson Davis as Secretary of War, both of whom had been subordinates of Scott in the Mexican war, and the latter of whom had subsequently become a Senator, the head-quarters of the army<sup>1</sup> were, at the request of General Scott, permitted to be "re-established in the city of New York as immediately prior to November 1, 1850."<sup>2</sup> In October, 1853,<sup>3</sup> the existing geographical divisions and departments were abolished, and five new departments—viz., departments of the East, West, Texas, New Mexico, and the Pacific—were established.

In a long and angry correspondence which took place between General Scott and Mr. Jefferson Davis, Secretary of War, in 1855,<sup>3</sup> the former charged the latter with having "silently abrogated the 48th paragraph" of the Regulations of 1847, (Article X, heretofore set forth,) to which the latter replied:

"With regard to paragraph 48 of the Revised Regulations of May 1, 1847, which you make it a matter of accusation that I have silently abrogated, I have to say that it never received the construction which your complaints imply, for the exclusive control of the *Military Establishment* has never been surrendered to the senior general of the army, as the unvarying practice of the War Department exhibits."

General Scott's charge had reference to the practice of the Secretary of issuing orders to and corresponding directly with the department commanders and other officers, without such orders and correspondence going through his hands as

<sup>1</sup> G. O. No. 7, A. G. O., March 15, 1853.

<sup>2</sup> G. O. No. 25, A. G. O., Oct. 31, 1853.

<sup>3</sup> Sen. Docs., 3d Sess., 34th Cong., vol. 7, doc. No. 34.



the general commanding-in-chief. Said he in a subsequent communication :<sup>1</sup>

“And here, to show what powers the law has withheld from you, [the Secretary,] I shall give the functions delegated by Congress, a subject which you have touched upon (by design) mincingly and obscurely:

“1. The act creating the War Department (August 7, 1789) gives to the Secretary, besides the custody of records, books, and papers of the old Department, the records of military commissions, the care of warlike stores, and other duties clearly ministerial.

“2. Section 5 act March 3, 1813, specifies and delegates power over quite a number of matters relative to stores and supplies; all clearly administrative.

“3. Articles of war 13, 18, and 19 intrust the same functionary with muster-rolls and returns, and give him authority over the forms of such papers and to require stated returns.

“4. The 65th of the same articles makes him the medium in passing proceedings of certain courts-martial, and the organ of the President's orders thereon.

“5. Another article of war (the 95th) charges the Secretary with receiving accounts of the effects of deceased officers and soldiers.

“6. Act May 18, 1826, section 1, respecting clothing, &c., charges certain duties upon the Quartermaster-General, under the direction of the Secretary of War.

“7. Several acts authorize the Secretary to purchase sites for arsenals.

“8. The Ordnance Department and its *matériel* are made subject to the Secretary of War by the act of February 8, 1815; and—

“9. Under the act of March 2, 1803, section 1, the Secretary of War is authorized to give directions to the State Adjutants-General in order to produce uniformity in returns, and to lay abstracts of same, &c.

“Possibly in this enumeration some other delegations of authority to the ‘principal officer’ in an Executive Department, on like matters, may have been overlooked;<sup>2</sup> and in every case enumerated he may, doubtless, as of and for himself, give his orders to all concerned, and delegate such authority, at

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<sup>1</sup> Sen. Docs., 3d Sess., 34th Cong., vol. 7, doc. No. 34, p. 210.

<sup>2</sup> The reader need hardly be assured that many had been overlooked in this paper.

least in part, to others; but taking the rule of the Constitution (10th amendment) that "powers not delegated" are reserved or withheld, where shall we find in our code a title of legislation giving that civil functionary rank and command in the army, or the right to issue orders of a strictly military character (not in the name of the President) to the United States troops or any one of their commanders?"

In this controversy General Scott did not impugn altogether the right of the "civil functionary" to issue military orders, but insisted that when issued to himself and the other "higher army officers," the said civil functionary should "condescend to speak in the name of the President."

The pretensions of General Scott in this regard were never recognized; nor should they have been. Said the Secretary, on July 25, 1855,<sup>1</sup> in reply: "You seem to propose for my observance a rule in which the rank of the military officer is to determine the manner in which the Secretary of War will communicate orders to him. Such a rule could only rest on the supposition that the Secretary of War has relative rank among the officers of the army, which is too absurd for consideration." And the Attorney-General, in an elaborate opinion of twenty octavo pages, (rendered August 31, 1855, in answer to the question of the President himself: "Are instructions issued by the heads of Departments to officers, *civil or military*, within their respective jurisdictions, valid and lawful without containing express reference to the direction of the President, and is or not such authority implied in any order issued by the competent Department?") more than confirmed the Secretary in the position he had taken. Said the Attorney-General,<sup>2</sup> in concluding his opinion:

"I conclude, therefore, on the authority of judicial decisions, and of the arguments constitutional and statutory herein adduced, that, as a general rule, the direction of the President is to be presumed in all *instructions* and *orders* issuing from the competent department; and that official instructions issued by the heads of the several Executive Departments, *civil or military*, within their respective jurisdictions, are valid and lawful, without containing express reference to the direction of the President."

<sup>1</sup> Sen. Docs., 3d Sess., 34th Cong., vol. 7, doc. No. 34, p. 172.

<sup>2</sup> Ibid., pp. 182-201; see also 7 Opin., 453.

And the President indorsed this opinion as follows, September 5, 1855:<sup>1</sup>

"The conclusions of this opinion are approved, and will be regarded as the settled doctrine as to the relations of the President to the respective heads of Departments."

A revised edition of the Army Regulations was published January 1, 1857, containing, as General Scott afterwards characterized it, "the peculiar and offensive views of the late Secretary."<sup>2</sup> This edition omitted entirely Article X, which General Scott, in a letter to the new Secretary of War,<sup>3</sup> written to influence an abrogation of these Regulations, characterized as "a very remarkable omission, evidently designed to affect my [his] office and authority in the army." But the Secretary of War wrote him, on September 25, 1857,<sup>4</sup> as follows:

"The failure to insert in the new Regulations a definition of the duties and authority pertaining to the office of Commander-in-Chief of the army which was contained in the old Regulations, I am satisfied, does not in any degree take from it any power, authority, honor, or command conferred upon that high office by law. Definitions are always difficult, sometimes impossible. The definitions in the old Regulations attempting to define the duties of the principal officers of the army are not, in my judgment, satisfactory; and I think the new Regulations wisely follow the example set by those which you prepared in 1825, in which no definitions were attempted."

The provisions of Article X were entirely omitted from the editions of the Regulations of 1861 and 1863, the latter of which has been in force from 1863 to the present time, and under which the Lieutenant-General in 1864, and the General of the Army in 1866, first began the exercise of their offices.

From the foregoing outline of the functions of the Secretary of War in his relations to the Military Establishment, and to the command of the army since the inauguration of the system by Mr. Calhoun in 1821, it will be seen that he has been, since the war of 1812, uninterruptedly exercising,

<sup>1</sup>Sen. Docs., 3d Sess., 34th Cong., vol. 7, doc. No. 34, pp. 179-180.

<sup>2</sup>Fry's Brevets, p. 204.   <sup>3</sup>Ibid., p. 203-206.   <sup>4</sup>Ibid., p. 207.

in pursuance of law and Army Regulations, jurisdiction both civil and military over the entire Military Establishment, and that over certain portions he has exercised jurisdiction to the exclusion of "the army" or "armies" proper, the latter standing in the relation of beneficiaries of the several portions administered by him; that these portions include *personal, material*, industrial and business operations, and ministerial duties connected with the development of the military strength and defense of the entire country during peace and war, and the support and maintenance of such armed bodies of men, whether regulars, volunteers, or militia, as the exigencies of the public service in peace and war required; that the chiefs of these subordinate branches assisted the Secretary of War in the exercise of that control over the public moneys devoted to military affairs, and over the public stores procured for warlike purposes, which pertain to him in his ministerial capacity; that the vesting of exclusive jurisdiction over these portions in a great civil officer, instead of in the officers commanding troops, was a wise distribution of executive power, whereby the armed bodies of men necessary for the purposes of government are rendered physically dependent, in their organized warlike capacity at least, on the responsible head of the civil Executive Department for War, answerable to the President who commands, and to Congress who "supports" such warlike bodies; and that since the year 1821 the senior general officer of the regular army had, by custom only, and not by any statutory authority, or any military authority derived immediately from or mediately through his commission as major-general, acted in Washington and elsewhere as "commanding the army."

Thus matters stood at the outbreak of the late war of the rebellion. Brevet-Lieutenant-General Scott acted as "commanding the army" until November, 1861, when he was superseded by Major-General McClellan; subsequently, Major-General Halleck discharged these functions until March 10, 1864, when Lieutenant-General Grant, just promoted to that grade, was placed in "command of all the armies of the United States." Throughout this gigantic struggle the subordinate branches of the War Department performed their functions under the direction of the Secretary of War. The immediate control and supervision of the Secretary of War over the subject of army transportation was specifically vested by Congress in that officer, by act of January 31, 1862. At the conclusion of this war the Secretary



of War rendered the following tribute<sup>1</sup> to these subordinate branches:

“By the heads of the respective bureaus of the War Department and their staffs, the Government has been served with a zeal and fidelity not surpassed by their brethren in the field. To them the honors and distinctions of an admiring public have not been offered, but in their respective vocations they have toiled with a devotion, ability, and success for which they are entitled to national gratitude.”

### REVIVAL OF THE GRADE OF GENERAL OF THE ARMY OF THE UNITED STATES.

Section 1 of the act of July 25, 1866, chapter 232, enacted that “the grade of General of the Army of the United States be, and the same is hereby, revived; and that the President is hereby authorized, whenever he shall deem it expedient, to appoint, by and with the advice and consent of the Senate, a General of the Army of the United States, to be selected from among those officers in the military service of the United States most distinguished for courage, skill, and ability, who, being commissioned as General, may be authorized, under the direction and during the pleasure of the President, to command the armies of the United States.”

This grade of General of the Army (or rather armies) of the United States had been created, as we have seen, in 1799, and was withheld by President Adams from being conferred on no less a personage than the illustrious Washington, because it was judged to touch, if it did not encroach upon, the constitutional functions of the Presidential office.

The act of 1866 did not direct the President to assign the appointee to command, whether or not, after appointment, but simply rendered the appointee eligible to the command “under the direction and during the pleasure of the President,” in precedence of all other general officers. Evidently, then, the General might be appointed, but with no claim, statutory or otherwise, to command as against the pleasure of the President. The appointment having actually been made during a period of peace, the officer became nominally General of the Army of the United States, provided by the law which revived the grade with a staff appropriate to a general officer in the field, consisting of a brigadier-general as chief

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<sup>1</sup> Annual Report of Secretary of War, Nov. 22, 1865.

of staff and six colonels as *aides*. The grade does not, *per se*, entitle the recipient to the command of anything beyond his own immediate staff officers, except at the pleasure of the President. In the absence of the *assignment* contemplated by the law, no function of office, civil or military, (except the function of drawing the pay and emoluments allowed by law, and the control of his staff officers,) can by right be exercised by him. No office nor function of any office existing at the time of his appointment, aside from the limited office marked out to him by the act, could have been recovered by him under a writ of *quo warranto*. Brought to this legal aspect, it will be conceded that there were none whatever. That this is the true view to take of the law relating to the office of General of the Army, will be conceded by every lawyer, and certainly no one will claim that an officer can by virtue of his commission alone "put himself on duty" in any grade of the service without orders from competent authority.

It is historically true, however, that the recipient of the grade in 1866 was not formally assigned to duty *in that specific grade* by the President. Being already in "command of the armies of the United States" as lieutenant-general, under the Presidential order of March 10, 1864, it may not have been deemed necessary to issue a formal order, but to consider the new office as a change of title only.

The disruption which occurred between the President and Congress in 1867 on the Reconstruction Measures, and the contention over the right of the President to remove at pleasure his constitutional advisers, were the occasion of placing the discharge of the purely civil duties of the Secretary of War in the hands of officers of the regular army by the appointment of one of them as Secretary of War. The policy of Congress towards the reconstructed States, in opposition to that of the President, required the administration of the Congressional measures through military instead of civil sources. In March, 1867, an act was passed fixing the headquarters of the army at Washington, and the jurisdiction of the General and the routine of his office were thus marked out:

"And all orders and instructions relating to military operations, issued by the President or Secretary of War, shall be issued through the General of the Army, and, in case of his inability, through the next in rank. The General of the Army shall not be removed, suspended, or relieved from command, or assigned to duty elsewhere than at said head-

quarters, except at his own request, without the previous approval of the Senate; and any orders or instructions relating to military operations issued contrary to the requirements of this section shall be null and void; and any officer who shall issue orders or instructions contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office; and any officer of the army who shall transmit, convey, or obey any order or instruction so issued contrary to the provisions of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction."

This provision was contained in an appropriation act, in approving which the President called attention to and protested against this section as virtually depriving him of certain of "his constitutional functions as Commander-in-Chief of the army;" and in his annual message of December 7, 1868, he directed especial attention to it, and urged that it be annulled, because it might "in times of great emergency seriously embarrass the Executive in efforts to employ and direct the common strength of the nation for its protection and preservation." Referring to this and other laws deemed by him encroachments upon the prerogatives of the Presidential office, he said:

"It is believed that the repeal of all such laws would be accepted by the American people as at least a partial return to the fundamental principles of the Government, and an indication that hereafter the Constitution is to be made the nation's safe and unerring guide. They can be productive of no permanent benefit to the country, and should not be permitted to stand as so many monuments of the deficient wisdom which has characterized our recent legislation."

On the 12th of August ensuing the passage of the act fixing the head-quarters of the army at Washington, the President, having invited the incumbent of the office of Secretary of War to resign, but without effect, proceeded to suspend him from office, and appointed the General of the Army to act as Secretary of War *ad interim*.<sup>1</sup> This temporary transfer of the office to a military personage continued until January 13, 1868, when, the Senate having non-concurred in the

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<sup>1</sup> McPherson's *Reconstruction*, pp. 282-293.

suspension of the Secretary of War, the latter resumed the duties of the office, under the tenure-of-office act — another law obnoxious to the Presidential prerogatives — and continued to discharge them without any personal or written communication with the President,<sup>1</sup> although the latter was and is the chief Executive and Commander-in-Chief of the army. The surrender of the office to the resuming Secretary by the General of the Army, without giving notice to the President of his intention to do so, occasioned some correspondence<sup>2</sup> between the President and the General, immediately after the event, in which the latter referred to the Secretary of War as “my superior, and your [the President’s] subordinate.” On the 21st February, the President, notwithstanding the action of the Senate in regard to the suspension, empowered the Adjutant-General to act as Secretary of War *ad interim*, and notified the Secretary of War of his outright removal from office. The Adjutant-General was immediately intercepted by legal process, however, under the tenure-of-office act, and the impeachment of the President ensued, the Secretary remaining personally within the walls of the War Department until the impeachment proceedings had been abandoned in the Senate, whereupon he notified the President on that day, (May 26, 1868,) that he had “relinquished the charge of the War Department.”<sup>3</sup>

Pending the proceedings on the articles of impeachment, and in entire consistency with the President’s theory of his constitutional rights in regard to removals, he sent in a nomination to the Senate to fill the vacancy which he assumed he had made in the office of Secretary of War.<sup>4</sup> This nomination was of a brigadier-general, still holding his commission in the regular army, who was confirmed after the impeachment proceedings had broken down, and the incumbent holding over had “relinquished his place as Secretary of War.”

On the 31st of May, 1868, the General of the Army was nominated for the Presidency, and was elected in the ensuing fall. It was known that, upon the accession of the new President, the Lieutenant-General was to be promoted to be General, and the chief of staff of the retiring General was to be appointed Secretary of War. Before this latter appointment was made, however, the then Secretary of War issued an order, under date of March 5, 1869,<sup>5</sup> marking out the fol-

<sup>1</sup> McPherson’s *Reconstruction*, p. 282.

<sup>2</sup> *Ibid.*, p. 283-293.

<sup>3</sup> *Ibid.*, p. 263.

<sup>4</sup> *Ibid.*, p. 264.

<sup>5</sup> G. O. No. 28, March 5, 1869.



lowing jurisdiction for the incoming General of the Army, viz.:

“By direction of the President, General William T. Sherman will assume command of the army of the United States.

“The chiefs of staff corps, departments, and bureaus will report to and act under the immediate orders of the General commanding the army.

“All official business which, by law or regulations, require the action of the President or Secretary of War, will be submitted by the General of the Army to the Secretary of War; and, in general, all orders from the President or Secretary of War to any portion of the army, line or staff, will be transmitted through the General of the Army.”

In assuming command under this order, the General of the Army announced the following chiefs of War Department bureaus and officers as his *general staff*,<sup>1</sup> viz.: The Adjutant-General, an Inspector-General, the Quartermaster-General, the Commissary-General of Subsistence, the Surgeon-General, the Paymaster-General, the Judge Advocate-General, the Chief of Engineers, the Chief of Ordnance, and the Chief Signal Officer. This general staff consisted of nine major-generals by brevet, and one brigadier-general by brevet; while his *personal staff*, announced at the same time, was to consist of his six *aides-de-camp* allowed by law, all having the full rank of colonel.

The new Secretary of War, however, soon found that this investiture of the War Office ran counter to the laws and traditions of his office, and unsettled a routine as ancient as the Department itself. Upon direct personal protestation to the President,<sup>2</sup> therefore, he succeeded in having the order of March 5 abrogated, except only that part which directed the General to “assume command of the army of the United States.” A jurisdiction was thereupon defined for the General of the Army substantially the same as that which had been allowed to the senior general officer of the army since 1821, and was as follows:<sup>3</sup>

“All orders and instructions relating to military operations issued by the President or Secretary of War will be issued through the General of the Army.”

<sup>1</sup> G. O. No. 11, A. G. O., March 8, 1869.

<sup>2</sup> Speech of Sen. Sumner, May 31, 1872, in U. S. Senate.

<sup>3</sup> G. O. No. 28, A. G. O., March 27, 1869.

It was required in this year that the annual reports of the chiefs of the various subordinate branches should be submitted to the Secretary of War through the head-quarters of the General of the Army. This, however, was rescinded in subsequent years.

The same session of Congress which revived the grade of General of the Army also directed the Secretary of War<sup>1</sup> to have prepared and submitted to Congress a code of Regulations, the existing Regulations of 1863 to remain in force until Congress should act on the new code. The ensuing period of political excitement prevented any action being taken in this direction, and in 1870 the Secretary was again directed to prepare a system of Regulations, "not inconsistent with the laws of the United States," which, when approved by Congress, were to be in force and obeyed until altered or revoked by the same authority. This last enactment (act July 15, 1870<sup>2</sup>) contained the following significant provisions: 1st, it repealed the law fixing the head-quarters of the army in Washington, and that provision requiring "all orders and instructions relating to military operations issued by the President or Secretary of War" to be "issued through the General of the Army, and, in case of his inability, through the next in rank;" and, 2d, it enacted that "*the officers of general and lieutenant-general shall continue until a vacancy shall occur in the same, and no longer.*"

Soon after the passage of this last act a board of military officers was assembled, who, after much labor and inquiry into the practical needs of the service, finally prepared a code, which, with some modifications, was submitted to Congress by the Secretary of War too late in the session of 1872-'73 for proper consideration by the House Military Committee, and it was accordingly ordered to be printed only.<sup>3</sup>

This system of regulations, prepared "IN AID OR COMPLEMENT TO THE STATUTES," defined and prescribed the details for carrying on the routine work of the army. Although not entirely free from defects in minor particulars, it nevertheless embodied the fundamental idea that the Secretary of War was the civil minister, for and in the place of the President, presiding over the Executive Department for War. After defining the various branches of the military service, including the *special staff* or *administrative services*, it laid down broadly the proposition that "*The Secretary of War is the head*

<sup>1</sup> 14 Stat. Large, 338.      <sup>2</sup> 16 Stat. Large, 319.

<sup>3</sup> See Report No. 85, H. R., 42d Cong., 3d Sess.

*of the administrative service of the army, and has control of its branches."*

The act of July 15, 1870,<sup>1</sup> directing the preparation of these Regulations, enacted that *when approved by Congress* they should "be in force and obeyed until altered or revoked by the same authority." If approved, therefore, by Congress, as reported, it would have been illegal for the President to alter or amend even the slightest provisions until authority was granted by Congress for the purpose. This unwise restriction being brought to the attention of Congress,<sup>2</sup> a section was passed March 1, 1875,<sup>3</sup> repealing so much of the law as required the Regulations to be reported to Congress, and authorized the President, under that law, "to make and publish Regulations for the government of the army, in accordance with existing laws."

In March, 1876,<sup>4</sup> the General of the Army, with his headquarters and aides, was recalled to Washington from St. Louis, whither he had gone in 1874,<sup>5</sup> upon his own request, and with the consent of the President. The jurisdiction which he was to fill in Washington was thus set forth in General Orders No. 28, A. G. O., 1876, viz.:

"The head-quarters of the army are hereby reëstablished at Washington city, and all orders and instructions relative to military operations, or affecting the military control and discipline of the army, issued by the President through the Secretary of War, shall be promulgated through the General of the Army, and the Departments of the Adjutant-General and the Inspector-General shall report to him, and be under his control, in all matters relating thereto."

The following are the main divisions of the War Department as at present organized, with a general statement of the duties appertaining to each:

#### THE ADJUTANT-GENERAL'S DEPARTMENT.

The promulgation to the army of orders and instructions relating to military operations, and the conduct of the

<sup>1</sup> 16 Stat. Large, 319.

<sup>2</sup> See Report No. 85, H. R., 42d Cong., 3d Sess.

<sup>3</sup> 18 Stat. Large, 337.

<sup>4</sup> G. O. No. 28, A. G. O., 1876.

<sup>5</sup> G. O. No. 108, A. G. O., Sept. 3, 1874.

correspondence between the General and the Army, are the duties of the Adjutant-General. The reception and preservation of muster-rolls and stated reports in regard to the *personnel* of the army; the forwarding of commissions; the superintendence of the recruiting service, and of the military prison at Leavenworth, Kansas; the care of papers concerning the enlistment and drafting of volunteers; the care and custody of the papers and records of the late Bureau of Refugees, Freedmen, and Abandoned Lands; and the furnishing of consolidated reports of the *personnel* of the entire army for the information of the Secretary of War and the General of the Army pertain also to the Adjutant-General.

All officers of this Department, subordinate to the Adjutant-General, are assigned to staff duty with the army, or to other appropriate duties pertaining to the office of Adjutant-General.

#### THE INSPECTOR-GENERAL'S DEPARTMENT.

The inspection and report upon the *material* and *personnel* of the army, when ordered by proper authority, and the inspection of army disbursing accounts under the law, are the duties of this Department.

#### THE QUARTERMASTER'S DEPARTMENT.

The providing, under the direction of the Secretary of War, of quarters and transportation for the army, and of clothing, camp and garrison equipage, horses and mules, forage, wagons, stoves, stationery, fuel, lights, straw, barracks, hospitals and medicines, the payment of funeral expenses of officers and men, of pay and expenses of guides, spies, and interpreters, and veterinary surgeons, and the charge of the national cemeteries, are the duties which appertain to this Department.

All officers of this Department subordinate to the Quartermaster-General are assigned to staff or other duty with the army, or to appropriate duties in connection with the Quartermaster's Department under the Secretary of War.

#### THE SUBSISTENCE DEPARTMENT.

The providing, under the direction of the Secretary of War, of the necessary articles and materials for the subsistence of the army, compose the duties of this Department.

All the officers of the Department subordinate to the



Commissary-General of Subsistence are assigned to staff or other duty with the army, or to appropriate duties in connection with the Subsistence Department under the Secretary of War.

### THE PAY DEPARTMENT.

The duty of this Department is, under the direction of the Secretary of War, to pay the enlisted men and officers of the army.

The officers of the Department subordinate to the Paymaster-General are assigned under the Secretary of War to appropriate duties in connection with the payment of the army.

### THE MEDICAL DEPARTMENT.

The Surgeon-General, under the immediate direction of the Secretary of War, is charged with the administrative duties of the Medical Department; the designation of the stations of medical officers, and the issuing of all orders and instructions relating to their professional duties. He directs as to the selection, purchase, and distribution of the medical supplies of the army. The Army Medical Museum and the official publications of the Surgeon-General's Office are also under his direct control.

### THE ENGINEER CORPS.

The Corps of Engineers, embracing its commissioned officers and battalion, is charged, under the direction of the Secretary of War, with all duties relating to fortifications, whether permanent or temporary; with torpedoes for coast defense; with all works for the attack and defense of places; with all military bridges, and with such surveys as may be required for these objects, or the movement of armies in the field.

It is also charged with the harbor and river improvements; with military and geographical explorations and surveys; with the survey of the lakes; and with any other work specially assigned to the corps by acts of Congress or orders of the President of the United States.

The officers of the corps subordinate to the Chief of Engineers are assigned to staff duty with the army, or to appropriate professional duties throughout the country under the President or Secretary of War.

## THE ORDNANCE DEPARTMENT.

The duties of the Ordnance Department, under the direction of the Secretary of War, consist in providing, preserving, distributing, and accounting for every description of artillery, small-arms, and all the munitions of war which may be required for the fortresses of the country, the armies in the field, and for the whole body of the militia of the Union. In these duties are comprised that of determining, subject to the approval of the Secretary of War, the general principles of construction, and of prescribing in detail the models and forms, of all military weapons employed in war. They comprise also the duty of prescribing the regulations for the proof and inspection of all these weapons, for maintaining uniformity and economy in their fabrication, for insuring their good quality, and for their preservation and distribution. For carrying into effect the general purposes here stated, large annual appropriations are made, under which extensive operations are conducted at the national armory, arsenals, and ordnance depôts.

The officers of the Department subordinate to the Chief of Ordnance are assigned to staff or other duty with the army, or to the command of arsenals, the armory, or other necessary duties connected with the Ordnance Department, under the Secretary of War.

## THE BUREAU OF MILITARY JUSTICE.

The Judge Advocate-General and his assistant, under the supervision of the Secretary of War, receive, review, and have recorded the proceedings of the courts-martial, courts of inquiry, and military commissions of the armies of the United States, and furnish reports and opinions on such questions of law and other matters as may be referred to the Bureau for the purpose by the Secretary of War.

The officers of the Bureau subordinate to the Judge Advocate-General are assigned to staff or other duty with the Army, or to other appropriate duties connected with the Bureau, under the Secretary of War.

## THE SIGNAL OFFICE.

The Chief Signal-Officer superintends the instruction of officers and men in signal duties, supervises the preparation

of maps and charts, and has the reports from the numerous stations received at Washington consolidated and published, and administers the affairs of the Signal Service under the direction of the Secretary of War.

Officers are detailed from the army proper for tours of instruction in army signaling and telegraphy, and, at the conclusion of these tours, they rejoin their regiments and new details are made.

## SECRETARIES OF WAR.

From 1789 to 1876.

Henry Knox, Mass., Sept. 12, 1789.  
Timothy Pickering, Pa., Jan'y 2, 1795.  
James McHenry, Md., Jan'y 27, 1796.  
Samuel Dexter, Mass., May 13, 1800.  
Roger Griswold, Ct., Feb. 3, 1801.  
Henry Dearborn, Mass., March 5, 1801.  
William Eustis, Mass., March 7, 1809.  
John Armstrong, N. Y., Jan. 13, 1813.  
James Monroe, Va., Sept. 27, 1814.  
William H. Crawford, Ga., Aug. 1, 1815.  
George Graham, Va., April 7, 1817.  
John C. Calhoun, S. C., Oct. 8, 1817.  
James Barbour, Va., March 7, 1825.  
Peter B. Porter, N. Y., May 26, 1828.  
John H. Eaton, Tenn., March 9, 1829.  
Lewis Cass, Mich., Aug. 1, 1831.  
Benj. F. Butler, N. Y., March 3, 1837.  
Joel R. Poinsett, S. C., March 7, 1837.  
John Bell, Tenn., March 5, 1841.  
John McLean, Ohio, Sept. 13, 1841.  
John C. Spencer, N. Y., Oct. 12, 1841.  
James M. Porter, Pa., March 8, 1843.  
William Wilkins, Pa., Feb. 15, 1844.  
William L. Marcy, N. Y., March 6, 1845.  
Geo. W. Crawford, Ga., March 8, 1849.  
Winfield Scott, *ad interim*, July 23, 1850.  
Chas. M. Conrad, La., Aug. 15, 1850.  
Jefferson Davis, Miss., March 7, 1853.  
John B. Floyd, Va., March 6, 1857.  
Joseph Holt, Ky., Jan. 18, 1861.  
Simon Cameron, Pa., March 5, 1861.  
Edwin M. Stanton, Pa., Jan. 15, 1862.  
U. S. Grant, *ad int.*, Aug. 12, 1867, to Jan. 14, 1868.  
E. M. Stanton, reinstated Jan. 14, 1868.  
J. M. Schofield, May 28, 1868.  
John A. Rawlins, Ill., March 11, 1869.  
Wm. T. Sherman, Sept. 9, 1869.  
Wm. W. Belknap, Iowa, Oct. 25, 1869.  
Alphonso Taft, Ohio, March 8, 1876.  
J. D. Cameron, Pa., May 22, 1876.





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